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ABSTRACT

This monograph explores the Hispanic experience of the criminal justice system by examining statistics provided by Federal, State, and local agencies. A review of the literature provides a theoretical perspective from which to view the data. Examination of the first set of data begins with a description of the experiences of Puerto Ricans in the New York State and New York City correctional systems. Statistical descriptions of Hispanic offenders in New York are presented. The following section reports on the experiences of Hispanic offenders in the Federal criminal justice system. The data describe the relationships among extra-legal characteristics of offenders and discretionary judgements of criminal justice professionals. A series of recommendations are made to criminal justice agencies suggesting strategies for change. (MK)

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THE HISPANIC EXPERIENCE OF CRIMINAL JUSTICE

Peter L. Sissons

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FOREWORD

The topic Professor Sissons addresses in this monograph, the Hispanic experience of the criminal justice system in the United States, has been a sadly neglected one. Scant attention, for example, has been given to the fact that the number of Puerto Ricans in New York State's correctional system is increasing notably, and at a rate which exceeds that of other groups. Puerto Ricans, therefore, represent an increasing percentage of the inmate population in the state, a fact which should be of compelling importance to elected officials, policy makers, professional practitioners, functionaries working inside and outside the criminal justice system, and the concerned public.

However, the increasing numbers of Hispanics in our correctional institutions constitute only part of the problem. As Professor Sissons correctly notes, it is the experience of the persons being processed through the system which poses critically relevant questions. The criminal justice system is an instrument in the service of society; for this reason we must ask how it serves and shapes all its constituents, including those who are processed by it. The monograph considers the question of whether or not the Hispanic offenders' collective experience is different from that of offenders of other origins while being processed through the criminal justice system. Data from a federal court are brought to bear upon this question.

The answer given, stated here in summary fashion, is that being an Hispanic increases the probability that the offender has been convicted of a drug offense; decreases the probability of being placed on probation; increases the probability of being sent to prison; and increases the probability of a longer sentence, if placed on probation. Of singular importance is the finding that ethnicity interacts with the system in such a way that even when analytical controls are imposed upon the character of the offense, Hispanics receive harsher sentences and are more likely to be sent to prison. The "linear model" of justice, therefore, is insufficient in explaining judicial outcomes: legal variables provide only partial

explanations of the process, extra-legal variables play a role. In the unimpassioned prose of the monograph, such issues remain "unheeded," yet even if we exert the most cautious view of the findings presented here, the hypothesis is more than plausible that imbedded in the character of the criminal justice system are institutional forms of discrimination which collectively and unjustly injure the Hispanic offender. Where such patterns become manifest, in the entire process from arrest to the legal disposition of the case, remains unknown. For many reasons, some obvious, others implicit, it is extraordinarily difficult to study empirically the criminal justice systems' impact upon minority persons. Be that as it may, the need for such research should not remain "unheeded," if we are to understand why the administration of justice in fact is not blind.

The first chapter of the monograph explores the conceptual framework from within which alternative perspectives upon the Hispanic experience of criminal justice might be developed. While several theoretical approaches to the interaction between Hispanic and other cultural groups have been developed, none has provided a satisfactory basis for understanding the importance of ethnicity for the Hispanic clients of the courts, the prisons, and the probation and parole systems. The second chapter examines Hispanic involvement in criminal justice through a consideration of official and other data. Because this monograph was written in the New York metropolitan area, much of the description relates to the New York Puerto Rican community. It focuses upon the correctional institutions which in the criminal justice system offer the most complete and reliable data concerning the ethnicity of offenders. Identifying the sentencing process as one of the critical points in decision-making which is likely to reveal ethnic bias, the third chapter reports literature concerned with the influence of ethnicity on criminal-court decision-making and empirically examines the sentences given to Puerto Ricans and other Hispanic offfenders in a federal district court in the metropolitan area. The last chapter presents a summary of the major conclusions and makes several recommendations regarding Hispanic involvement in the criminal justice system.

This monograph is the third in a series published by the Hispanic Research Center to stimulate interest in Hispanic concerns. The first monograph reported on the health conditions of New York City's Puerto Ricans while the second presented a study of the outgroup marriage patterns of New York City's Hispanic populations. The Hispanic Research Center was established at Fordham University in 1977, under a grant from the National Institute of Mental Health, to work toward five major objectives: (1) to conduct interdisciplinary research on priority issues relevant to the mental health of the Hispanic population, (2) to increase and upgrade the number of Hispanic scholars experienced in doing

research in the mental health related disciplines, (3) to provide technical assistance to Hispanic behavioral scientists, professionals, and organizations working to remedy mental health problems in Hispanic communities, (4) to develop meaningful links between individual Hispanic researchers and between these researchers and persons involved in the formulation and implementation of Hispanic relevant public policy, and (5) to disseminate information on the mental health of the Hispanic population.

The center is certain that the data presented here will be a valuable contribution to resolving one of the major social dilemmas prevailing in the Hispanic community.

Lloyd H. Rogler

Fordham University
November 1979

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This study was conceived as an effort to stimulate policy-related research in the largely neglected area of Hispanic involvement in American criminal justice. The project was initiated in late 1977 at the prompting of Dr. Lloyd H. Rogler, Albert Schweitzer Professor of Humanities at Fordham University and director of the Hispanic Research Center located at Fordham. Throughout the investigation and the preparation of the study, the Hispanic Research Center provided generous financial support for research assistance, data processing, and publication. Dr. Rogler's enthusiasm and timely advice contributed substantially to the study in all its stages.

The generally elusive quality of the information relating to Hispanics in the several components of the criminal justice system necessitated the adaptation and recalculation of officially published data in order to focus upon Puerto Rican and other Hispanic populations. These data revealed so many provocative gaps and raised so many important and intriguing questions that the investigation was extended to a first-hand examination of the background records of probationers and parolees on the caseload of a federal probation office. An important part of the work was undertaken by William Burgos, who as a research assistant made a valuable contribution to the project. He and William Rios and Edgardo Guadalupe were responsible for the initial data processing. I am greatly indebted to Dr. Rosemary Cooney and Dr. Douglas Gurak for their advice concerning the statistical model to be employed in the presentation of the data in Chapter 3 and for their efforts in developing this model. The data processing for the third chapter was undertaken by Dr. Brian Earley who along with Drs. Gurak and Cooney also reviewed successive drafts of the manuscript and provided many constructive suggestions which served to strengthen the final document.

Access to data and unpublished research reports was provided through many personal contacts within the criminal justice system and through the cooperation of present and former students. I am grateful to those graduate

students in the Department of Sociology and Anthropology at Fordham University who drew my attention to a number of relevant studies and to those students in the Department's criminal justice program who shared their knowledge and experience with me. Special acknowledgement should be made of Marta Rivera, one of my Ph.D. candidates, whose work on the law and social change in Puerto Rico has contributed significantly to my own thinking. Inevitably this work was undertaken in the midst of a busy professional life. I am grateful to those who made it possible for me to accept the additional responsibilities which accompanied this project. Madeline Kilminster, assistant director of Fordham University's Graduate Programs for Probation and Parole Officers, generously assumed temporary responsibility for some of the tasks which normally fall to me as director of the programs. Gail Gavagan, the secretary of the Graduate Programs for Probation Officers, extended her working day on many occasions in order to type successive drafts of the manuscript. The final editing of the manuscript was undertaken by Stasia Madrigal of the Hispanic Research Center.

As always I am grateful to my wife, Dr. Therese Herman Sissons. On this occasion not only did she accept yet another postponed vacation but she also set aside her own work in order to review and criticize mine.

While many people constructively participated in the preparation and completion of this study and are essential contributors to any success it may have in achieving its stated goals, its deficiencies are solely the responsibility of the author.

Peter L. Sissons

THE HISPANIC EXPERIENCE OF CRIMINAL JUSTICE

1

THEORETICAL PERSPECTIVES

In the study of criminal justice, as in the study of all areas of social concern, there are fundamental conceptual and theoretical issues. The differentiation between black, white, and Hispanic groups which appears to occur in the criminal justice system raises a constellation of questions, primarily around the themes of cultural relativism, adaptation, and assimilation which have been abiding preoccupations in American sociology since the establishment of the discipline.

If the Hispanic experience of criminal justice is to be understood, it must be from within a reliable and clearly articulated framework. Although a number of studies have been conducted in Puerto Rico, there is almost no published literature in the United States devoted exclusively to that experience. The literature that is available draws heavily upon concepts inherited from earlier generations of American sociologists: subculture theory, anomie, differential association, labeling theory, and social disorganization.

This section reviews eight theoretical emphases which reflect the relevance of these concepts in the study of Hispanic involvement in criminal justice in the United States. The emphases are not mutually exclusive or equally valid. In varying degrees, however, they reflect the views that (a) the unique Hispanic experience can be understood as a result of initial differences between Hispanic and mainstream cultural assumptions, particularly regarding concepts of law, social control, and communication patterns, and/or as a result of breakdowns and transitional changes in Hispanic cultural values and supports, and (b) these cultural differences ought to be taken into account in the operations of the various criminal justice systems.

A. Hispanic Participation in Normative Conflict

Hispanic culture is identified as a minority culture whose norms

partially conflict with those of the larger host society. Because of this conflict, behavior which is normally acceptable in the Hispanic culture is defined as deviant or even illegal in the larger society. This situation is the classic phenomenon of culture conflict succinctly described by Louis Wirth (1931) in terms of two delinquency-provoking situations: In the first"... the culture of a group to which the individual belongs sanctions conduct which violates the mores or the laws of another group to whose code he is also subject." In this situation, culturally normal behavior transported into a new society comes into direct conflict with existing legal codes. In the second situation described by Wirth "... the individual belongs to a group in which certain forms of conduct have a different meaning and where there is a difference of emphasis in values than in the dominant society." In this situation the behavioral conventions of a particular culture may not in themselves violate the law of the wider society, but for individual members of a minority culture they may result in an ignorance of the informal control mechanisms which operate in the wider society to control behavior before it becomes criminal.

This conflict of culture operates in complementary ways in the case of the immigrant to Latin America and the immigrant from Latin America. Lipset (1967) argues, for instance, that the immigrant to Latin America is a source of entrepreneurial innovation and economic progress because he can assume a deviant role with greater freedom than an indigenous member of the society.

> In societies in which the values of the dominant culture are not supportive of entrepreneurial activity, someone who is relatively outside of the social system may have a particular advantage in entering an entrepreneurial activity. The restraints upon entrepreneurial activity imposed by the network of social relations would be less effective against such a person. Thus, an immigrant may be outside many of the networks of the nation and freer to engage in entrepreneurial activity, in other words, freer socially to deviate. (Lipset, 1967)

The Latin American immigrant in the United States, on the other hand, might find that his normal behavior is automatically defined as deviant and, in some instances, as criminal by the dominant society. This has been known to occur in relation to recreational activities such as gambling; religious practices such as spiritist ceremonies; attitudes toward property, particularly communal property; and patterns of interpersonal communication, frequently misinterpreted by those unfamiliar with Hispanic cultures.

Discussions of the effects of interpersonal communication patterns focus most frequently on body language as a mode of communication and upon the values of dignity, respect, honor, aggression, and subservience which are communicated differently by the different cultures. These

various communication patterns have been identified as an important feature of the relationships between Hispanics and non-Hispanic representatives of the criminal justice system, between Hispanics and the police (Bayley and Mendelsohn, 1968), and between Hispanic prisoners and the prison administration (Davidson, 1974; Lee 1976; Jacobs, 1977).

Cultural misinterpretation of this kind may result in an individual being labeled deviant, if not criminal, by the dominant culture. It may also result in negative values being attached to the external manifestations of Hispanic culture which would lead inexorably to stereotyping. New immigrants, aware of the differences of their own cultural patterns, often experience ambivalence and embarrassment when they first enter the established migrant group whose culture they must now share. As a result, the attitudes and behavior patterns which distinguish newly established migrant groups may be judged negatively not only by the host society but also by the entering migrant himself (Rogler, 1972). The negative impact of such misinterpretations and stereotyping can be compounded and multiplied if the stereotyping benefits the interests of the dominant group in the new society. The imported Hispanic culture is then stereotyped as deviant and this label is perpetuated whenever a member of that culture does happen to commit a crime. Bustamente (1973) discusses this process in relation to the stereotyping of Mexican culture as criminal in the border regions of the United States. Focusing upon the illegal Mexican migrant who is defined as a deviant by the same society which maintains a demand for his cheap labor, Bustamente describes how this group, operating as a labor force, maximizes the profits of employers whose economic interests are served by the perpetuation of the deviant label.

B. Civil and Common Law Concepts of Justice

There is an extremely intimate relationship between legal ideas and the values, ideologies, and political and social attitudes of a culture. The positive law of a country (the officially administered law) is closely related to the "living law" (the cultural expressions of social control). Of fundamental importance to an understanding of Hispanic culture and the Hispanic experience of criminal justice, therefore, is the fact that the Latin American nations, including to a large extent the Commonwealth of Puerto Rico, plus other former Spanish territories, such as the Philippines, are civil law countries (Merryman, 1969). Thus, Hispanic people living in the United States have a legal tradition derived largely from Spanish colonial law and not from Anglo-American case law which, in turn, is derived from English common law.

The differences between civil law and common law are considerable.

The laws of Spain which were transplanted to the colonies of the New World were rooted in Roman Law and reflect in varying degrees the emergent influences of the great civil codes of the European nations, particularly the Napoleonic Code. While the cultural implications of the differences between civil and common law traditions are problematic for some authorities (Friedman, 1975), for others "a legal tradition... is a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society... (it) relates the legal system to the culture of which it is a partial expression." (Merryman, 1969).

Civil law is based on the presupposition of the rationality of the human will. It is generally characterized by codification, the separation of public and private law which restricts equity in legal proceedings involving the State, and the historical acceptance of closed proceedings in which the judge plays an investigatory role.

Common law, on the other hand, is rooted in the assumption that social control is dependent less upon a State-imposed rationality than upon the legal order which exists in nature. In common law traditions, the doctrine of *stare decisis* (precedent), the adversary system in criminal justice, *habeas corpus* (the writ against illegal imprisonment), and trial by jury testify to a fundamental legal restriction upon the power and the authority of the State (see Bradley, 1977) and serve to provide a contrast with civil law.

The two traditions represent different views of the place of power and authority within society and different cultural responses to social control. Civil law establishes its codes on the basis of legal principles; common law finds its principles in the complexity of the case.

Hispanic cultures in the United States, then, are expressions of a perception of the law and of the relationship between law and authority which is not found in the United States or Canada except residually in parts of Louisiana, Texas, and Quebec. North Americans in Latin American countries frequently experience confusion when they become involved in the Latin American legal system. Ignorance of the culture may result in violation of the law and lead to intricate legal procedures which offer an experience contrary to North American cultural expectations of the law. Conversely, the Hispanic violator of the law in the United States must often have a comparable experience as he is exposed to the procedures of the American criminal justice system.

For the Puerto Rican, this experience is further complicated by the legal history of his country and its influence upon his culture. Puerto Rico was a colony of Spain, a civil law nation, until 1898. With the advent of American rule, the law of the State of California with its experience of accommodation to Mexican civil law was adopted for the island in 1902 (Mauchett and Sussier, 1953). Inevitably, residual elements of civil law

remained lodged in parts of the Puerto Rican legal system. More importantly, many cultural expectations of the law possessed by Puerto Ricans today also remain rooted in civil law tradition.

A comprehensive exploration of the consequences of these cultural roots in Puerto Rico has never been made. However, the implications of changes comparable to those in the island's formal legal system have been examined in relation to Louisiana (Friedman, 1973; 138),[1] and the technical overlap between the two systems in Puerto Rico has received some attention (Mauchet and Sussier, 1953; Cintron, 1971). But the nature of the cultural dilemma which such changes have wrought and the extent to which this dilemma has been brought to the American mainland by Puerto Rican and other Hispanic migrants have not yet received the full examination they deserve (Rivera, 1979).

C. Hispanic Culture as a Culture of Transition

The commission of crimes by Hispanic persons in the United States cannot be separated from other forms of social deviance which appear to be related to the stress induced by culture shock. In common with other cultures transplanted to a new land, Hispanic cultures become transitional structures for the immigrant in the United States. In the process, Hispanic culture itself does not remain static. Subject to new strains and values, it sometimes disintegrates, sometimes is reformulated, and sometimes is adapted. Second- and third-generation Hispanics, caught between the Hispanic and the dominant cultures, particularly experience conflict which may result in deviance.

This possibility was first raised by the sociologists of the Chicago school, particularly by Shaw and McKay (1942) and is strongly implied in

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[1]The dependence of civil law upon codes and learned commentaries rather than upon judicial interpretation is well illustrated by the codes in effect in Louisiana in 1806, three years after the termination of Spanish governance. According to Dargo (1970) these included the books of the *recopilacion de Castilla* and *autos acordados; Las Siete Partidas* of King Alphonse; ordinances, royal orders, and decrees which applied to the colony of Louisiana; the ordinance of Bilbao; and a number of commentaries and legal treatises. As a movement toward the acceptance of common law, Louisiana accepted trial by jury and the writ of *habeas corpus* in 1806 but otherwise the legislature insisted that the law of the territory was that of the civil code composed of the "institutes, digest and code of the Emperor Justinian aided by the authority of the commentators of the civil law" along with the Spanish law. (See Friedman, 1973).

Merton's theory of anomie (1968). Deviance and criminality are identified as an outcome of the breakup of traditional cultural forms, especially those associated with the family and with relations between the generations and between the sexes. It is within this context that explanations of juvenile delinquency among Hispanics in the United States are being developed.

It has been suggested that Puerto Ricans are particularly able to cope with transition "because of the supportive, help-giving familial and cultural systems they bring with them, the supportive systems they create in the host society, and the supportive systems which, already there, are available for help" (Rogler, 1978). However strong these systems may be, evidence suggests that this support provided by the family and culture and so vital to its members may be abruptly cut off when transitional responses are labeled as criminal by the host society and the individual is imprisoned. Lee's studies (1976) suggest, for instance, that imprisonment, particularly in its initial stages, contributes to the disappearance of culture forms. Law-breaking and resultant incarceration are associated with stigma in Hispanic families and the law-breaker may find that he is effectively expelled from his social group through exclusions from the parental home. It is within this context that what has been described as an Hispanic inmate culture develops.

D. Hispanic Inmate Culture

In the large volume of literature devoted to the analysis of inmate culture in the correctional setting, some attention has been given to the particular importance of culture for the Puerto Rican and Mexican-American inmate. The issue has been discussed in terms of cultural separation and cultural acceptance.

Upon admission to the correctional system, the Hispanic inmate is separated both physically and psychologically from his culture. Temporarily housed in a detention center or reception unit, and bearing the stigma of criminal charges, the Hispanic inmate exists in a cultural vacuum which is a serious threat to his mental health as well as to the structure of the family network to which he belongs (Lee, 1976). Possibly deprived of cultural support systems because of his family's humiliation at his imprisonment, it is no great surprise that the Hispanic inmate constitutes a major suicide risk in the early days of his detention.

When he is assigned to his permanent housing in the correctional system, however, research indicates that the new Hispanic inmate is received into an Hispanic sub-culture which provides him with immediate reference points as he is socialized into the institution. This experience of cultural acceptance may be associated with "prisonization" and secondary

socialization into a continuing life of crime. Jacobs (1977) and Davidson (1974) both found that Hispanic inmates—Puerto Ricans in Stateville and Mexican-Americans in San Quentin—were more readily absorbed into the prison culture because of the existence of Hispanic sub-cultures inside the institutions which articulated the cultural values familiar to the newcomer. The notions of family, neighborhood, honor, dignity, and manhood worked positively to introduce the new Hispanic inmate to the prison and provided the support systems which otherwise were not available. In both Stateville and San Quentin, the Hispanic culture also served to protect the inmate from isolation and from physical danger. In San Quentin the common culture of the Mexican-American prisoners provided a base for their domination of the prison population through the control of the inmates' economic system.

E. Hispanic Culture as a Source of Deviance

Just as Hispanic cultures may be adapted to serve as sources of social support for the convicted criminal within the prison, adaptations may also be made in social structures to meet the emerging needs of the immigrant Hispanic community at large. According to Merton's theory of anomie (1968), innovation may be an adaptive response in the face of limited access to the means of achieving socially prescribed goals. In order to obtain goals which cannot be reached by members of the immigrant groups through means culturally approved by the host society, new means may be adapted from already established cultural patterns. When this innovation occurs, the new means may be defined as criminal by the dominant society.

The territorial neighborhood of the Hispanic community, for example, may lend itself to organized crime activity in those areas where economic and other forms of deprivation predominate and legal employment is not available. The Hispanic neighborhood as an island of cultural homogeneity in a sea of pluralism may provide support systems not only for a cultural group caught in transition but also for networks of illegal activity. Ianni (1974) argues that the Hispanic's perception of the family and related concepts of honor, dignity, loyalty, and manhood may facilitate the duplication of Sicilian types of organized crime.

But if organized crime is understood as a criminal activity supported by values of loyalty, interdependence, and mutual support, then any culturally homogeneous neighborhood whose population is economically deprived is potentially a breeding ground for organized crime. There is nothing identified as endemic to Latin American or other Hispanic cultures which sets them apart in this respect. Despite the evidence furnished for periodic government commissions, the nature of organized crime continues to be

sociologically problematic.[2]

F. Hispanics and the Sub-Culture of Violence

We have seen how some theorists such as Ianni (1974) believe that the transplanted social structure of many Hispanic immigrant groups may provide the basis for organized crime in situations of economic deprivation. But there are other theorists who suggest that violence is a cultural value which is not merely a result of the economic pressures of immigration; rather, they affirm, violence pre-exists in the culture. That is, violence as part of some Hispanic sub-cultures is seen not as an outgrowth or adaptation of a culture in transition but as normative to the original sub-culture. From this perspective, then, certain kinds of criminality are seen as manifestations of Hispanic sub-cultural values.

In a frequently quoted study, Marvin Wolfgang and Franco Ferracuti (1967) discuss violence as endemic to certain types of sub-cultures. They identify a configuration of characteristics typifying such a sub-culture in Mexico, for example, which in its basic form consisted of working-class males living within a tradition of physical aggression (Wolfgang and Ferracuti, 1967; 280). A study of Puerto Rican male offenders who had committed violent crimes found that almost 70 percent of them belonged to a sub-culture in which aggression is a common form of behavior and in which a challenge to venerated values provoked an aggressive response (Toro-Calder, 1950).

The sub-culture of violence thesis has been subject to a number of questions and modifications in recent years (Erlanger, 1974; Curtis, 1975), principally on technical grounds which challenge the validity of the concepts used in applying the theory rather than on grounds which challenge the hypothesis that violence is related to commonly shared cultural perceptions of human interaction. There is also a significant debate on whether violence is a reflection of the initial sub-culture, as Wolfgang and Ferracuti originally hypothesize, or if it is a result of the breakdown of the initial culture and its gradual replacement by the structures associated with urban development, which themselves support different expressions of violence.

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[2]Descriptions of the origins, structure, and operations of crime syndicates are of necessity incomplete, tentative, and frequently speculative rather than factual. Blok (1974) has recently argued convincingly that traditional American notions of the Sicilian mafia and its replication in the United States are highly simplistic and neglect the political roots and intentions of the *mafiosi*.

The importance of violence as a contemporary political instrument should not be overlooked. In surveys conducted in 1969 and 1974 (Blumenthal, 1976), it was found that a positive attitude toward violence prevailed in a large segment of the male population in the United States. Sixty-six percent of the surveyed population felt that the police should use guns in controlling crowds while half of the low-income respondents believed that violent protest was necessary to achieve change. Blumenthal concluded that these were not the responses of deviants so much as the expression of positive attitudes toward violence that are embedded in conflicting segments of American culture. Thus, while some cultural values are more supportive of violence than others, clearly no sub-culture has a monopoly on violence in the United States.

Recent studies of juvenile delinquency in Latin American countries suggest that property offenses are largely a product of urbanization and social and economic development. As the nation becomes more developed, so the volume of crime, particularly property crime, increases and so the prevalence of violence in the society becomes a smaller percentage of the overall crime rate (Clinard and Abbott, 1973). However, a recent study in Puerto Rico discusses the source of juvenile delinquency in precisely the opposite terms of the usual discussion of the sub-culture of violence. Whereas violence is discussed in the context of honor, pride, virtue, and other cultural values, Ferracuti et al. discuss delinquency in the context of *lack of respect* and the prospective offender's conviction that he has "little to lose" (Ferracuti, Dinitz, and De Brenes, 1975). In a relatively homogeneous culture, other authors have argued, the notion that violence is an expression of culture is not viable. The cause of violent crime may be found in the social pathology which both accompanies and causes social change (Kupperstein and Toro-Calder, 1969).

In his discussion of the evolution of law and crime in *The Division of Labor in Society*, Durkheim suggests that offenses against the collective conscience will be more serious in the homogeneous society characterized by strong social solidarity, while property offenses and the breaking of contractual relationships will be more serious in the society characterized by a sophisticated division of labor in which social solidarity is no longer strong. In a pluralist society, where ethnic cultures compete with the wider society and with each other, both these conditions may prevail.

It is possible then that certain forms of violence within established codes of conduct are an assertion of culture. But other forms of violence associated with the achievement of certain criminal goals may be expressions of the failure of an individual to retain his grasp upon a culture which is slipping away from him in a new highly industrialized and socially complex society.

G. Hispanics in the Criminal Justice Professions

There is a general consensus in the United States that cultural considerations ought to play a part in the administration of criminal justice. The good intentions with which policies are planned and implemented in relation to the Hispanic peoples in this country, however, are often accompanied by only a vague understanding of the nature of Hispanic culture. There is a general recognition that agencies should employ more Hispanic people in both law enforcement and treatment capacities. In part this constitutes an admission of the economic and cultural plight of the Hispanic community and in part it reflects the need for bilingual law enforcement and treatment personnel who can increase the efficiency of the agencies and function as cultural advocates for bewildered Spanish-speaking clients.

In the official context, this issue has been expressed in terms of anti-discrimination laws and the hiring of minority people in the various correctional systems as an affirmative action (Skoler and Loewenstein, 1974). The influence of minority cultures in police departments has been described by Niederhoffer (1967) and the attempt to accommodate the New York City Police Department to sub-cultural needs has been discussed by Viteritti (1973). Bayley and Mendelsohn (1968) have also addressed this question. Lee (1976) describes the hiring of minority people as professionals in the New Jersey correctional system. Jacobs (1977) describes the transition from ethnic homogeneity among prison officers in Stateville in 1970 to an officer force which was 44 percent black in 1974 (for discussions of ethnic membership in the legal professions see Carlin, 1966; Rueschmeyer, 1973; and Auerbach, 1976).

But while there is a widespread demand for greater minority representation in criminal justice agencies and professions and a substantial official documentation of the lack of such representation, there are few, if any, attempts to develop a cohesive rationale for sub-cultural representation and to study the cultural implications or the cultural actualities of the introduction of Hispanic officers and treatment personnel into the criminal justice system. The simple practical urgencies of the need to overcome language barriers within parts of the criminal justice system serve to divert attention away from such important questions as: What shifts will occur in the balance of discretionary decision-making by criminal justice personnel as more Hispanics are recruited into such occupations? What are the implications of such shifts for the successful treatment of Hispanic offenders? What function might Hispanic criminal justice personnel fulfill as a link between the offender and the socio-cultural support systems in the community.

H. Culture and Jurisprudence

If the response by police departments and correctional agencies to the needs of Hispanics is reflected primarily in terms of minority hiring, within the courts the question of culture as it is related to the admission of evidence, the determination of innocence or guilt, and the criminal sentence rests upon a concern with jurisprudence.

Sociologists have long been aware that the formal appreciation of jurisprudence by legal professionals is by no means uniform. Indeed, in various ways sociology has contributed to the diverse perceptions of law and legal judgment which are to be found within the American legal system. Sociological jurisprudence and legal realism, particularly, have resulted in the introduction into the adversary process of extra-legal evidence formerly regarded as inadmissible and have to some extent served to justify the relativism of many court decisions. In the work of Roscoe Pound, the great American expositor of sociological jurisprudence, the law is an instrument of society directed toward the fulfillment of specific social interests. Courts of appeals, particularly, have become concerned with the social values of legal rules. Inevitably such a concern brings the legal system, however reluctantly, into the arenas of social and political conflict, and legal judgments become relative to one or another of the competing interests of the time.

Clearly related to this understanding of the law is the question of to what extent should social facts be introduced as evidence in the trial court. The law of evidence is complex but it is relevant here insomuch as the twentieth century has seen more and more exceptions granted to types of evidence which formerly had been excluded from the court. The evidence of the expert witness who may testify not only to the facts determined by the physical sciences but also to facts determined by psychology and sociology may serve to place an evaluation upon the defendant and upon his alleged actions which in former times would not have been available for consideration by judge or jury. The social investigations conducted by probation officers which may contain value assumptions about certain social groups or certain life styles, although not evidence for consideration by the jury, clearly provide extra-legal information which may be used by the judge in determining the disposition and length of sentence. It is not necessary here to dwell upon the historical and scientific factors which have contributed to the development of this situation. It should be observed, however, that the recognition of new kinds of information by the courts is a tacit acknowledgement that, even when bound by the rational formality of common law procedure, judicial judgments are based on relative, rather than absolute, truth.

Max Weber observed this characteristic of formal justice:

> Whatever is not introduced or put into a motion does not exist as far as the judge is concerned: the same is true of facts which remain undisclosed by the recognized methods of proof, be they rational or irrational. Thus, the judge aims at establishing only that relative truth which is attainable within the limits set by the procedural acts of the parties. (Weber, 1978; p. 812).

Rational procedure, however, does not serve to define the parameters of relativism. Even judges have admitted that in the adjudication process unconscious forces influence their decision-making (Cardozo, 1975; 11-13). As Holmes observed in probably the most famous and most quoted statement about the common law:

> The life of the law has not been logic; it has been experience... the prejudices which judges share with their fellow-men have had a good deal more to do than the syllogism in determining the rules by which men should be governed. (Holmes, 1963; p. 6).

If some schools of jurisprudence have learned to recognize that the law may be relative to the conscious and unconscious judicial experience of social forces, it has also been recognized that for society as a whole the reality of the law is most often understood in terms of the experience of legal judgment. Writing at the same time as Holmes, Leon Petrazycki answered the question, "In what sphere does law exist as a real phenomenon? It is in the mind of that person who experiences legal judgment." (Petrazycki, 1955).

There are, then, strong grounds for taking cultural factors into account in the administration of criminal justice. But the attempt to do so requires a theoretical framework from within which the relationship between the Hispanic communities and the criminal justice system may be understood, a framework which, as we have seen, has not yet been adequately articulated.

In the hope of identifying some of the empirical components of such a framework, Chapters 2 and 3 examine data reflecting the Hispanic experience of criminal justice in several agencies in which the criminal law is made manifest.

2

HISPANIC INVOLVEMENT IN THE CRIMINAL JUSTICE SYSTEM

Arrest, prosecution, conviction, and incarceration rates, particularly in the major metropolitan areas, are dominated by disproportionate representations of the black population. Hispanics by contrast appear to constitute such small percentages of those being processed that they are simply classified as "other" in official statistics or scattered throughout the different social categories and do not appear at all as an identifiable ethnic group.

The low statistical profile of Hispanics may be explained in part by the fact that many agencies both within and without the criminal justice field use different criteria for describing their populations, often preferring racial rather than ethnic categories. When Hispanic ethnicity is used, inconsistent definitions—based on either language, place of birth, or parentage—often result in inaccurate statistics. The failure of many government agencies to achieve a uniform statistical definition of the composition of Hispanic populations and to present adequately the data they do collect has been well documented (Alers, 1978).

While offical statistics suggest that low priority is being given to the question of whether or not the Hispanic community constitutes a problem for the criminal justice system, they tell us very little about a second and possibly more important question: What kind of problem does the criminal justice system pose for the Hispanic community? Is there a distinctive Hispanic experience of criminal justice as suspect, defendant, convicted offender, or victim which differentiates Hispanics from other clients of the system? If so, what circumstances have contributed to this experience?

The data which have been generated to meet the administrative needs of police departments, the courts, and the various correctional agencies do not reveal how representative the Hispanic presence in criminal justice may be.

As we will see in this monograph, there are indications that the

representation of the Hispanic population becomes increasingly disproportionate at those stages immediately following the decisions to either release the clients of the system or move them progressively toward the ultimate sanction of incarceration. It may be that there is a greater proportion of Hispanics on probation than was originally arrested, reflecting a greater percentage of Hispanic prosecutions following arrest than that of other arrested groups. Similarly, the proportion of Hispanics who are finally incarcerated appears to be greater than the proportion sentenced to probation. Moreover, the data indicate that the percentage of Hispanics released on parole may be disproportionately small. The precise nature of this pattern of progression, however, can only be surmised on the basis of disparate sources of incomplete information culled from state crime reports, probation and parole caseloads, and prison statistics.

A. Official Statistical Sources

Data describing the involvement of Hispanics in the criminal justice system are available in a wide variety of loosely related but largely uncoordinated sources. These sources provide data for different or overlapping populations and most often they are based on different or overlapping statistical definitions. In addition, the time-frames of the different data bases do not always coincide and those which describe Hispanic populations usually have to be extracted from large amounts of raw data and subjected to secondary analysis.

The principal source of statistical information about the incidence of crime continues to be the Uniform Crime Reports submitted annually to the Federal Bureau of Investigation by state reporting agencies which obtain their data from state and local police departments. The reports vary in composition from state to state, and data on ethnicity is not consistent and is often impossible to analyze adequately. The Uniform Crime Reports for New Jersey, for example, follow the nationally accepted format by providing arrest data by offense for white, black, Chinese, Japanese, and American Indian populations in the state but not for Hispanics who are either aggregated with non-specified ethnic groups in the category of "all others" or classified racially as black or white. Even where the police data are adequately categorized, it is widely acknowledged that they are susceptible to immeasurable bias owing to the political sensitivity of law enforcement.

Data provided by the criminal courts are also inconsistent in reporting on ethnicity. This may be because the court structure is so diverse and/or because information on ethnicity, when collected, is not generally released

by some court systems.[3] This is the case, for example, with the federal courts. A recent study of the federal court statistics which did have access to these data found that only about 1 percent of all offenders processed by the federal system were neither white nor black. In consequence, this study limited its investigation of federal sentencing practice to white, black, and other racial groups. Moreover, in its consideration of geographic variations in sentencing, the study made no attempt to determine the influence of Hispanic ethnicity in those regions where the Spanish-speaking population is relatively large (Sutton, 1978).

Generally, the data provided by correctional institutions are the most complete of those available within the criminal justice system. However, they, too, fail to provide a satisfactory overview of the criminal justice involvement of the Hispanic population: they are not always consistent and in important instances they omit descriptions of the ethnic composition of the prison populations. The statistical reports of the Federal Bureau of Prisons, for example, distinguish only between white inmates and "all other" while the statistical report provided to the United States Department of Justice by the Bureau of the Census, which describes the distribution of prisoners in state and federal institutions, has no data at all describing inmate ethnicity or national origin (U.S. Department of Justice, 1974, 1978). The populations for which data on inmate ethnicity are available are frequently defined differently, making comparative analysis difficult. The population may be defined either as the total population of the correctional system on a given day, or as the average daily population for the year, or as the number of new commitments in a specific month or year. All states use a combination of these reporting methods and provide different types of data in different reports.

The data which will now be described for the State of New York provide a good example of the difficulties of comparative analysis. They were obtained from three differently, if officially, defined samples drawn largely from the same population: (1) new commitments to correctional institutions in specific years, (2) average daily populations of correctional institutions, and (3) the total population of correctional institutions on a specific date. These reports are valuable because they describe the distribution of inmate populations in terms of ethnicity, but they create analytical problems since they are not totally cross-tabulated. Although information is provided on the use of dangerous drugs and narcotics addiction, for example, it is not correlated with ethnic identity. This is particularly unfortunate for the study of Hispanic inmates since drug use has been identified as one of the major social problems in the New York

[3]See, for example, *New York State Felony Processing Quarterly Reports*, New York State Division of Criminal Justice Services, Albany, New York.

Puerto Rican community (Alers, 1978). This correlation and others may be obtained only through separate examination of the classification data maintained by the correctional institutions.

Logic would dictate that an examination of official data should begin with arrest rates and proceed through to incarceration. The incompleteness of the data, however, determines otherwise. The following analysis will concentrate upon the data relating to inmate populations as these appear to be the most complete.

B. Ethnic Composition of Inmate Populations

A recent survey of 233 correctional institutions in the United States and Puerto Rico revealed that 19.5 percent of the total male inmate population is Hispanic, with Puerto Ricans accounting for 15 8 percent of that total (Lawrence et al., 1977). According to the survey, the largest concentrations of Hispanic populations in correctional institutions are found, predictably, in Puerto Rico (100 percent), California (20.5 percent) and the eastern states[4] (5.9 percent). In California the Hispanic inmate population is described as totally Mexican-American while in the eastern states it is almost entirely Puerto Rican. The inclusion of Puerto Rico in this survey clearly disproportionately weights the percentage of Hispanic inmates and presents a misleading picture.

The incarceration of Hispanic people is a sociological issue specific to certain states or regions and not to the nation as a whole. The findings of the survey, which in part are misleading, seem to suggest that the issue of Hispanic involvement in the criminal justice system is most acutely evident in California. The weakness of Lawrence's findings, however, lies in the fact that the State of California is compared with the whole eastern region of the United States. In the eastern region, the incarceration of Hispanics is specific to particular states whose incarceration rates are close to or above the national average. This is especially the case with the State of New York whose Hispanic inmate population is, in fact, comparable in percentage to that of California, and is considerably larger than the estimated Hispanic population of the prisons in neighboring New Jersey.

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[4]The states defined as eastern in this study were New Jersey, Vermont, Maryland, Pennsylvania, Connecticut, Massachusetts, Maine, New York, and Delaware. The study by Lawrence et al. was based on a survey of all adult correctional institutions in the United States and Puerto Rico. As only 233 institutions responded to the survey, the results are clearly subject to errors caused by the response rate.

According to the monthly report of ethnic distributions of correctional inmates produced by the New York State Department of Correctional Services at the end of March 1979, 19.8 percent of the 20,122 prisoners of both sexes in New York State correctional facilities were Puerto Rican and 19.9 percent of the 19, 568 male inmates incarcerated by the state were identified as Puerto Rican (State of New York, Department of Correctional Services, 1975). Since New York State has a larger than average Puerto Rican population, the fact that its Hispanic inmate population is comparable with the national average might suggest that Puerto Ricans are not overrepresented in the prison system. Such a conclusion would be erroneous.

Two indicators provide the initial statistical dimensions which make this situation apparent. The first is the progressive increase of new commitments of Puerto Ricans to state correctional custody in both absolute and percentage terms since at least 1971. The second is the incarceration of Puerto Ricans who live in New York City as contrasted with other parts of the state. We will examine the data reflecting each of these dimensions.

According to the New York Department of Correctional Services' annual and monthly reports from 1973 to 1979, there has been a gradual increase in the percentage of Puerto Rican inmates in New York State prisons.[5] During the same period, the proportion of white inmates has remained relatively stable while the proportion of black inmates has decreased slightly. This is the case for both male and female inmates in New York City and in upstate institutions.

Since 1973, the Puerto Rican share of the inmate population has increased by a little over 5 percent. As Table 1 indicates, the absolute number of Puerto Rican inmates has risen to 3,991 since 1973, representing an increase of more than 100 percent, a dramatic change when compared with the population increases of the other main inmate groups.

The increase in the percentage of Puerto Ricans in state prisons reflects the increase in the Puerto Rican share of new commitments since 1971 for both men and women. The number of all new male commitments to the state correctional institutions increased from 4,527 to 8,111, an increase of 79.1 percent between 1971 and 1977. But the commitments of Puerto Rican males rose from 710 to 1,736, an increase of 144.5 percent in the same period (Table 2).

Comparable trends can be discerned for women. Although the numbers are not large, the growth rate of the Puerto Rican female population under

[5]The Department defines Puerto Ricans by birth and by parentage.

TABLE 1
Ethnicity of All Inmates in New York State Correctional Facilities, 1973-1979, Over Two-Year Intervals

Ethnicity	1973	1975	1977	1979[1]	Change 1973-79	Percentage Change
White	3663	4291	4635	5220	1557	+ 42.5
Black	7766	9100	10285	10784	3018	+ 38.8
Puerto Rican	1945	2616	3625	3991	2046	+105.2
Other	61	67	101	127	66	+108.2
Totals	13435	16074	18646	20122	6687	+ 49.8

Source: *Adapted from:*

State of New York Department of Correctional Services, Annual Statistical Reports, *1975.*

State of New York Department of Correctional Services, Monthly Reports of Ethnic Distributions of Inmates Under Custody 1977 and March 1979.

[1]*As of March 30, 1979.*

TABLE 2
Ethnicity of New Male Commitments to Facilities of New York State Department of Correctional Services, 1971-1977

Ethnicity	1971	1972	1973	1974	1975	1976	1977	Change 1971-77	Percentage Change
White	1495	1450	1660	1716	1997	2092	2253	+ 758	+ 50.7
Black	2309	3256	3623	3587	3927	4135	4078	+1769	+ 76.6
Puerto Rican	710	813	1042	1164	1253	1497	1736	+1026	+144.5
Others	13	15	32	26	34	43	44	+ 31	+238.5
Totals	4527	5534	6357	6493	7211	7767[1]	8111	+3584	+ 79.1

Source: *Adapted from:*

State of New York Department of Correctional Services, Characteristics of New Commitments 1976, *Vol. XI No. 1.*

State of New York Department of Correctional Services, Characteristics of New Commitments, 1977, *Vol. XII No. 1.*

[1]*Omits ten cases for which no data are available. Actual number is 7,777.*

custody in the State of New York between 1973 and 1979 has been considerably larger than that for any other group, except for the small number of women classified as "other." White women constitute a smaller proportion of the women admitted to state prison in 1977 than in 1971,[6] while the proportions of black and Puerto Rican women increased in those years.

Thus, between 1971 and 1977 the absolute number of Puerto Ricans being admitted to New York State prisons increased by more than 144 percent and the percentage of Puerto Ricans in the total inmate populations also increased. Black males currently account for the largest percentage of new admissions; white males are next with Puerto Ricans accounting for the smallest percentage of the three groups. But if commitment rates continue at the rates described above, Puerto Ricans will soon outnumber whites in new admissions and perhaps become the second largest group of inmates in state facilities. As we will see now, analysis of New York City inmates in New York State correctional facilities shows comparable changes in both absolute numbers and percentage of Puerto Rican commitments. In addition, a comparison between the commitment percentages of New York City Puerto Ricans and the incarceration of Puerto Ricans in New York State as a whole reveals that the Puerto Rican proportion of new inmates from New York City is greater than the Puerto Rican proportion of new inmates from the state as a whole.

The most recent information available shows that the percentage of Puerto Rican males from New York City newly admitted to the prison population is more than twice as high as the estimated percentage of Puerto Ricans in the city's male population (Table 3).

In 1971, 20.1 percent of New York City's male residents admitted to state prisons were Puerto Rican, while the 1970 census data show Puerto Ricans accounting for 7.3 percent of New York City's male population. The figures for the new commitments of males to New York State correctional facilities in 1977 reveal that 1,610 out of a total 5,406, or 29.7 percent of the newly committed New York City male residents are Puerto Ricans (Table 3) compared with the 21.4 percent Puerto Rican share of the commitment on the statewide level. As Table 3 illustrates, the number of all new male admissions from the city increased by 70.4 percent between

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[6]In 1971 the proportion of white women in the female commitments to New York State prisons was 33.6 percent; in 1977 it was 24.3 percent. The proportion of black women increased from 54.6 percent to 56.1 percent and the proportion of Puerto Rican women increased from 11.7 percent to 18.6 percent. (State of New York Department of Correctional Services, 1977).

1971 and 1977. Over the same period, the number of Puerto Rican males newly admitted from the city had increased by 152 percent.

Among the new female admissions to prison from New York City, the percentages of black women decreased between 1971 and 1977, while the percentage of Puerto Rican women rose from 18.1 to 28.6 percent. On a statewide level, Puerto Rican women accounted for only 18.6 percent of new female commitments, a situation comparable to male commitment patterns.

In 1971, more white women than Puerto Rican women from New York City were admitted to prison. In 1977, the Puerto Ricans (54 new admissions) outnumbered the whites (26 new admissions) among the newly admitted female prisoners. Once again, the numbers are small, never reflecting more than a total of 189 new admissions, but they are of interest because they match similar trends among the state and city male admission patterns.[7]

In summary the analysis of Puerto Rican inmates newly admitted from New York City to New York State correctional facilities shows a pattern of increases similar to that within the state as a whole. These trends are the opposite of those appearing in relation to white and black inmate groups, which show decreased percentages in the total number of commitments made on both state and city levels. The percentage of Puerto Rican inmates from New York City is twice the proportion of Puerto Ricans reported in the city's overall population. In addition, the percentage of commitments of Puerto Ricans from New York City is substantially higher than the percentage of Puerto Rican commitments statewide. A part of this over-representation is almost certainly due to the young age structure of the Puerto Rican male population.

While the number of upstate Puerto Ricans admitted to correctional institutions is small, the percentage change between 1972 and 1977 for male Puerto Ricans from upstate (112.5 percent) was still greater than the total percentage increases for the white (49.9 percent) and black (35 percent) incarcerated population. (New York State Department of Correctional Services, 1977).

The increasing proportion of Puerto Rican inmates during the 1971-1977 period provides a weaker indicator of increasing Puerto Rican incarceration rates than the increases in the number of newly incarcerated Puerto Ricans over the same period. However, the three measures of this increase—the overall increase of Puerto Ricans as new commitments, the percentage share of new commitments by Puerto Ricans, and the number

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[7]See new commitment tables for females in New York State Department of Correctional Services, *Characteristics of New Commitments*, 1977, Albany, New York.

TABLE 3
Ethnicity of New Male Commitments from New York City to Facilities of New York State Department of Correctional Services, 1971-1977

Ethnicity	1971	1972	1973	1974	1975	1976	1977	Change 1971-77	Percentage Change
White	514	517	711	720	815	785	844	+ 330	+ 64.2
Black	2019	2434	2772	2804	2937	2972	2952	+ 933	+ 46.2
Puerto Rican	639	757	982	1098	1177	1347	1610	+ 971	+152.0
Totals	3172	3708	4465	4622	4929	5104	5406	+2234	+ 70.4

Source: *State of New York Department of Correctional Services*, Characteristics of New Commitments, 1975.

State of New York Department of Correctional Services, Characteristics of New Commitments, 1976, *Vol. XI No. 1.*

State of New York Department of Correctional Services, Characteristics of New Commitments, 1977, *Vol. XII No. 1.*

of incarcerated Puerto Ricans during the 1973-79 period—all point in the same direction: a shift in the ethnic balance of the correctional population in the state.

The causes for this change are difficult to establish and are open to speculation from a number of different perspectives. The shift may reflect increased levels of criminal activity on the part of the Hispanic communities and/or be the result of differential treatment accorded to Hispanics by the criminal justice system.

The young age structure of the Puerto Rican population may be a major explanation of the increasing Puerto Rican involvement with the criminal justice system. In 1970 it was estimated that 73 percent of the people in New York City who had Puerto Rican parents were under the age of 15 years. If this estimate was correct, then between 1971 and 1977 a large percentage of the Puerto Rican population could have moved into the age groups traditionally associated with high crime rates. According to information published by the New York State Division of Correctional Services, of the commitments from New York City to the state prisons in 1977 the blacks and Puerto Ricans had larger percentages under the age of 21 than the new white commitments (New York State Department of Correctional Services, 1977).

While it appears reasonable to assume that the young age structure of the Puerto Rican population contributes to their high and increasing rates of incarceration, lack of recent data on the age structure of the various ethnic groups prohibits us from estimating the proportion of the Puerto Rican increase which can be attributed to this factor. Other data indicate that Puerto Rican return migration to the island disproportionately involves individuals aged 20 to 34 (Badillo-Veiga et al., 1975). This could be counteracting, to some extent, the younger age structure of Puerto Ricans. The 1980 census should permit us to provide a reasonable estimate of the contribution of demographic factors to changing ethnic differentials in the correctional system.

Reflecting upon possible reasons for the ethnic differences in commitment rates, the 1976 report on the characteristics of new commitments prepared by the State of New York Department of Correctional Services observes: "Reasons for these ethnic differences in commitment rates are a combination of sociological factors and criminological practices such as arrest rates, conviction, sentencing and commitment patterns." (New York State Department of Correctional Services, 1976: 32). While demographic factors may help to explain some of the circumstances which have contributed to the situation so far described, their influence cannot be fully determined without more knowledge concerning the interaction between population characteristics and other, as yet unexamined, sociological and criminological factors.

The increasing proportion of Puerto Ricans being admitted to correctional facilities only partially explains the growth of the Puerto Rican share of the inmate population in New York State. Admission is one part of the process. Release from prison is another. In 1976 the state first published data on inmates discharged from custody during the year. Because of technical reasons these data are limited, but they do provide information concerning the ethnic distribution of the discharged population.

Table 4 compares the ethnic distribution of males committed to correctional facilities in 1976 and 1977 with that of males discharged from such facilities in the same years.

In both years more males were released from the facilities than were admitted. Puerto Rican admissions, however, were considerably higher than Puerto Rican releases. In 1977, for example, 376 more blacks were discharged from custody than were admitted, whereas 305 fewer Puerto Ricans were discharged than admitted.

These discrepancies may result from several causes. It is possible that Puerto Ricans are receiving treatment from the criminal justice system which differs from that given to others, particularly in regard to the sentencing or the parole-granting processes. However, much of the pattern could result from the recent trend of increasingly larger shares of Puerto Rican new commitments. Since Puerto Ricans constituted a smaller proportion of the correctional population several years ago, the pool of Puerto Rican prisoners eligible for release may be relatively small compared to the present. Thus, the excess of new commitments over releases may reflect only the surge in new commitments—a surge which exceeds the trends for other ethnic groups. On the basis of current evidence, however, we can not rule out the possibility that the release process of Hispanics differs from that of other ethnic groups. An aspect of this issue is discussed in Chapter 3.

The data for New York City admissions and releases are not reproduced here in tabular form but the state report reveals that while the percentage of white male inmates being released (15.8 percent) was almost identical to that of white males admitted from the city (15.6 percent), the percentage of black admissions (54.6 percent) was 4.3 percent lower than that of black releases. Puerto Ricans, on the other hand, had 5.6 percent more admissions than releases of New York City male residents.

Data provided for female offenders show comparable trends. In 1977 the percentage of white women released from custody (24.3 percent) was close to that of white women admitted. The major discrepancies occurred between black and Puerto Rican women. While 56.1 percent of the women committed to correctional facilities were black, black women accounted for 62.9 percent of the women released. By way of contrast, 18.6 percent of the

TABLE 4
Males Committed and Males Discharged,
Facilities of New York State Department of Correctional Services,
1976 and 1977, by Ethnicity

Ethnicity	Admitted 1976		Discharged 1976		Admitted 1977		Discharged 1977		Difference between Discharged & Admitted	
	N	%	N	%	N	%	N	%	1976	1977
White	2092	27.0	2277	29.2	2253	27.9	2311	28.1	+185	+ 58
Black	4135	53.5	4252	54.6	4078	50.5	4454	54.3	+117	+376
Puerto Rican	1497	19.3	1245	16.0	1736	21.5	1431	17.4	-252	-305
Totals[1]	7724	99.8	7774	99.8	8067	99.9	8196	99.8	+ 50	+129

Source: *Adapted from:*

State of New York Department of Correctional Services, Characteristics of New Commitments 1976, *Vol. XI No. 1.*

State of New York Department of Correctional Services, Characteristics of New Commitments, 1977, *Vol. XII No. 1.*

State of New York Department of Correctional Services, Characteristics of Inmates Discharged, 1976, *Vol. XI, No. 2*

State of New York Department of Correctional Services, Characteristics of Inmates Discharged 1977, *Vol. XII No. 2.*

[1]*Omits "other" and 10 cases for which no data were available. Actual total was 7,777.*

admitted women were Puerto Rican, compared with 12.6 percent of those who were discharged. (State of New York Department of Correctional Services, 1977).

The percentage of inmates released on the maximum expiration date of their sentence is very small: 4.8 percent of male inmates and less than 1 percent of female inmates in 1977. The majority of releases are to parole supervision; that is, they come about as a result of decisions made within certain limits of discretion. Legal and sociological factors combine to result in such decisions although whether it is the legal or the sociological factors which contribute most to the apparent discrepancies between ethnic groups is not clear.

What is clear is that the ethnic distribution of both admissions and releases points to real increases in the Puerto Rican inmate population in the state. In percentage terms, this increase appears to be consistently related to fluctuating black and white admissions which periodically may show a decrease and to differences between the number of those admitted to custody and those being discharged.

However it is to be explained, the Puerto Rican population of the state correctional system is growing and the Puerto Ricans constitute an increasing share of the percentage of the inmate population. There is undoubtedly a need to direct resources to seek for explanations of this phenomenon in sophisticated analyses of social, cultural, economic, and political influences.

C. Offender Characteristics and Crime

We have just seen that both the number and percentage of Puerto Rican inmates in New York State are growing. It becomes increasingly important, then, to explore how the parameters of the inmate population may be changing as the result of these shifts. Analyses of offender characteristics reveal that, on the average, the Hispanic inmate population may be differentiated from the inmate population as a whole in terms of education, occupation, and nature of crime.

1. Education

Table 5 provides the most recently available data (1976) on the relationship between education and ethnicity. The Puerto Rican inmates in New York State institutions can be distinguished from other incarcerated ethnic groups by the years they have spent in formal education. Educational differences found in American society as a whole are reflected in prison populations. Thirty-eight percent of the white inmates and 26.6 percent of the black inmates had completed high school, compared with

13.6 percent of the Puerto Ricans. Almost 40 percent of the Puerto Ricans had not proceeded beyond elementary school, in comparison with 19.2 percent of the black inmates and 22.1 percent of the white.

In his New Jersey study, Lee (1976) found that while 10 percent of all state offenders had no more than six years of education, the figure for Hispanic offenders was 29 percent. The data which are presented for federal offenders further on in this monograph reveal similar differences between the ethnic groups.

The years spent in the educational system are, of course, an unreliable indicator of the quality of education. In his study of the Yardville Reformatory Population in Bordentown, New Jersey, Sissons (1974) found that the more years of education an inmate had experienced, the greater was the discrepancy between his expected and measured Scholastic Achievement Test scores. In the Yardville sample the white inmates had the overall fewest number of years at school and the smallest discrepancy between expected and measured scholastic achievement. The largest discrepancy was found for black inmates and it was those who had spent the most years in school. The Puerto Ricans came midway; they had spent more years at school and had a greater discrepancy in their scores than the whites, but they had spent fewer years at school and had a smaller discrepancy than the blacks.

Prisons are frequently pointed to as repositories for, among other things, the undereducated. The lack of education, however, is not uniform in inmate populations. Even among the educationally deprived populations in New York's prisons, Puerto Ricans stand out as having less education than the inmates of other ethnic groups.

2. Occupation

Data describing occupation prior to arrest of male admissions in 1976 reveal a fairly uniform concentration in the unskilled occupations for black, white, and Puerto Rican new inmates.

While the differences of occupation between the three ethnic groups are not significant, the pattern of relationships between the three groups reproduces in a less exaggerated form the relationships between occupation and ethnicity found in society as a whole. Proprietary and supervisory occupations were held by 7.6 percent of the white inmates, 4.7 percent of the black inmates, and 4.3 percent of the Puerto Ricans. At the other end of the scale, 32.7 percent of the whites were classified as laborers, while 34.8 percent of the blacks and 32.6 percent of the Puerto Ricans had been engaged in such occupations (New York State Department of Correctional Services, 1976).

The direction, if not the size, of these differences suggests that as the

TABLE 5
Percentage of New Male Commitments to New York State Correctional Facilities in 1976 by Ethnicity and Education

Ethnicity	N	%	Elementary School	High School Non-Graduate	High School Graduate	College	Other
White	2092	99.7	22.1	37.1	26.1	11.9	2.5
Black	4135	99.8	19.2	51.3	19.1	7.5	2.7
Puerto Rican[1]	1540	99.9	39.9	40.6	11.0	3.6	4.8
Total[2]	7767	99.8	24.1	45.4	19.3	7.9	3.1

Source: *Adapted from:*

New York State Department of Correctional Services, Characteristics of New Commitments, *1976, Volume XI No. 1.*

[1]*Includes 43 "other" ethnic cases which were computed with Puerto Ricans in official reports.*

[2]*The total N omits 10 cases for which no data are provided by the state. The actual number of new commitments was 7,777.*

Note

Rows may not add up to 100 percent owing to rounding to one decimal place.
P < .001

Puerto Rican percentage of new admissions to state correctional facilities increases, the educational and occupational characteristics of the prison populations will increasingly reflect economic and educational deprivation. This leads inevitably to the as yet unresearched question: Is such deprivation in itself sufficient to explain the incarceration of Hispanics?

3. Types of Offense

The Uniform Crime Reports do not furnish the researcher with sufficient information to make an analysis of the relationship between ethnicity, arrest, and alleged criminality. Data are available, however, for the newly admitted prison inmates.

The most common offense for which males of all ethnic origins were incarcerated in both 1975 and 1976 was robbery. While this offense is more prevalent among black inmates than among others, it nonetheless accounted for the largest number of confinements in each of the ethnic groups. The contrast between robbery and burglary is quite noteworthy (Table 6). Whereas the black and Puerto Rican populations have large percentages of commitments for robbery, the percentages in these groups who had committed burglaries were substantially smaller than the percentages for the white population committing this offense in either 1975 or 1976.

Perhaps the most interesting feature of Table 6 is its recording of the distribution of drug offenses. In both years the Puerto Ricans had the largest percentage of new commitments for drug offenses while the black population had the smallest percentage of offenders in this category. Also of note is the fact that while the percentage of drug offenses among new commitments increased for both white and Puerto Rican males between 1975 and 1976, the percentage for blacks remained unchanged. Moreover, the increase for the white population was a relatively modest one of 3.6 percent while that for the Puerto Ricans was larger, 9.2 percent.

Table 7 presents the corresponding data for newly admitted females. Again the most distinguishing features of the relationship between offense and ethnicity are those associated with drug offenses. In 1975 and 1976 Puerto Rican women had larger percentages of their population incarcerated for drug-related offenses than was the case with either of the other ethnic groups. In 1976 while the white percentage of drug offenses remained relatively constant, that of the black female admissions fell by almost 10 percentage points and the number of Puerto Rican women imprisoned for drug offenses increased by 9.4 percent.

What is the relationship between the increase in drug offenses among the Puerto Rican new admissions and the general increase in Puerto Rican new admissions themselves? What is the relationship between the

TABLE 6
Percentage of Males Admitted to New York State Correctional Facilities in 1975 and 1976, by Ethnicity and Offense

Offense	White		Black		Puerto Rican	
	1975	1976	1975	1976	1975	1976
Murder/ Homicide	9.2	10.0	11.1	13.3	18.0	17.3
Robbery	24.3	24.0	46.4	44.5	36.4	31.6
Burglary	22.7	20.2	9.2	9.5	10.3	9.8
Felonious Assault	5.6	4.4	5.1	5.0	6.3	4.1
Grand Larceny (not auto)	4.8	4.0	2.3	2.7	1.3	.9
Rape	2.3	2.7	3.5	3.4	1.8	2.6
Sex Offenses	2.9	3.1	1.2	1.0	1.4	.7
Drug Offenses	13.9	17.5	10.4	10.4	16.1	25.3
Dangerous Weapons	3.7	3.1	6.1	5.2	5.8	5.2
Other Felonies	10.0	10.6	4.2	4.6	2.0	2.2
Totals %	99.4	99.4	99.5	99.6	99.6	99.7
Totals N	1997	2092	3927	4135	1253	1497

Source: *Adapted from:*

State of New York Department of Correctional Services, Characteristics of New Commitments, *1975, and* Characteristics of New Commitments, *1976, Volume XI No. 1.*

Note

Columns do not add up to 100 percent because of rounding to one decimal place.
1975 $p < .001$
1976 $p < .001$

prevalence of such offenses among Puerto Ricans and their relatively low share of the percentage of annual releases? Official data are not presented in such a way that these questions can be examined without extensive research. Attention has already been drawn to the importance of drug-related problems for the Puerto Rican community and to the absence of a comparison between drug-related offenses and ethnicity among prison inmates in the official data. Among the many recommendations in the final chapter is one which addresses the need to investigate possible correlations between drug-related crimes and the disproportionate representation of Puerto Ricans in the correctional systems.

Table 6 also illustrates how the Puerto Rican male inmate population was distinguishable from that of other newly admitted males by the percentage of offenses involving death. In both 1975 and 1976 the Puerto Ricans had higher percentages of inmates newly admitted as a result of an action in which someone died, whether these actions were classified as murder, negligent homicide, or non-negligent homicide.

The relatively high proportion of crimes involving death among Hispanics is substantiated by other research. Lee in his study of a small stratified sample of Hispanic inmates in New Jersey (1976) found that of the 93 persons in the sample, 24 percent had been incarcerated for homicide. In a study of a 60 percent sample of the Yardville Reformatory population in Bordentown, New Jersey, in 1974, Sissons found that 25 percent of the small sub-sample of Puerto Rican inmates were in prison for an offense which had resulted in death. In his study of Puerto Ricans and health, Alers (1978) drew attention to the fact that in New York City 18.9 percent of Puerto Rican deaths in the 15 to 44 year age group were caused by homicide.

The only offender statistics for New York State which are computed by offender age, sex, and race by the Division of Criminal Justice Services are those which refer to homicide. The most recent data available are for the year 1977, the same year that the number of Hispanic homicide offenders was first published by the state as a separate category. The available data are not cross-tabulated. It is therefore impossible to compare the age and sex characteristics of the white, black, and Hispanic groups, just as it is impossible to compare the 1977 distributions with those of previous years.

The homicide figures for New York State in 1977 reveal that ethnicity not only of the offenders but also of the victims is disproportionately distributed. The white population is substantially underrepresented among victims of homicide while both the black and Hispanic victims were overrepresented by at least 100 percent. The white proportion of the population of the state in 1970 was 82 percent; white victims of homicide in 1977 accounted for 32 percent of all homicide victims. This compares with black victims who accounted for 46.5 percent of the homicide victims

TABLE 7
Percentage of Females Admitted to New York State Correctional Facilities in 1975 and 1976, by Ethnicity and Offense

Offense	White		Black		Puerto Rican	
	1975	1976	1975	1976	1975	1976
Murder/ Homicide	17.3	14.8	19.2	25.1	16.6	17.9
Robbery	14.4	17.5	15.5	18.6	19.4	17.9
Felonious Assault	4.3	2.7	9.3	7.9	5.5	2.5
Grand Larceny (not auto)	14.4	9.4	8.0	4.2	5.5	2.5
Drug Offenses	33.3	32.4	40.3	30.0	44.4	53.8
Other	15.9	22.9	7.4	14.1	8.3	5.1
Totals %	99.6	99.7	99.7	99.9	99.7	99.7
Totals N	69	74	161	163	36	39

Source: *Adapted from:*

State of New York Department of Correctional Services, Characteristics of New Commitments, *1975, and* Characteristics of New Commitments, *1976, Volume XI No. 1.*

Note

Columns do not add up to 100 percent because of rounding to one decimal place.
1975 p Not Significant
1976 $p < .05$

but only 12 percent of the state population, and Hispanic victims who provided the state with 22 percent of its known homicide victims against a 5 percent Puerto Rican share of the state population. (New York State Division of Criminal Justice Services, Annual Report, 1977).[8]

The disproportionate distribution in ethnicity is even greater in the case of the homicide offenders, the larger share of homicide offenses clearly belonging to the blacks, with Hispanics coming a distant second. The black

[8]New York State ethnic distributions are obtained from Table 48, U.S. Bureau of Census of Population 1970 PC (1)-C34.

population of the state accounted for 50 percent of known homicide offenders in 1977; Hispanics accounted for 26 percent and whites for 24 percent. The data continued to confirm the association established by Wolfgang 20 years ago that "testing the difference in proportionate distributions of Negros and whites, either as victims or offenders, reveals that there is a significant association between race and criminal homicide." (Wolfgang, 1958). This observation would appear to hold for Hispanics as well.

Homicide is largely confined to the ethnic group of the offender. On the whole, white victims of homicide are killed by other whites and this holds true for blacks and Hispanics. The New York State data (State of New York Division of Criminal Justice Services, 1977) indicate, however, that black and Hispanic victims are more likely to have been killed by people of their own ethnicity than are members of the white population. Thirty-four percent of the white victims had died as a result of action by someone outside their own ethnic group while between 10 and 12 percent of the blacks and Hispanics had been victims of someone outside their own ethnic group.

In 46 percent of the homicide cases in the state in 1977, the ethnic background of the offender was unknown. In the majority of cases this meant that the case was not solved by the police. A slightly larger percentage of Hispanic homicide victims (51.6 percent) were the victims of offenders whose ethnic origins were unknown; therefore, cautious interpretations of these data are called for. (State of New York Division of Criminal Justice Services, 1977).

Violence is less a factor in female criminality. As Table 7 indicates, black women were more often incarcerated for offenses involving death than white or Puerto Rican women, and the percentage of black women incarcerated for such offenses increased by 5.9 percent between 1975 and 1976. Since illegal abortion is classified as homicide these percentages may not be remarkable.[9]

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[9]Whether patterns similar to those found in New York are also present in New Jersey is unclear from available data. According to the State of New Jersey Department of Law and Public Safety (1978), between August and December 1977, 10 percent of all those dying in New Jersey as a result of murder were Hispanic. However, less than 1 percent of the 345 murder arrests in New Jersey in 1977 were classified as "all other" and therefore as possibly Hispanic.

D. Summary

Publicly available statistics furnished by criminal justice agencies have been examined in this chapter in an attempt to extrapolate some of the principal dimensions of the Hispanic experience of criminal justice in New York. The nature of the data is such that the major focus has been upon male Puerto Ricans. Little, if any, information is available for non-Puerto Rican Hispanics.

The officially published data suggest that both the male and female Puerto Rican populations of state correctional institutions are growing at disproportionately rapid rates. These rates may be related to the young age structure of New York's Puerto Rican population and to the increasing percentages of commitments for drug offenses which appear to characterize both male and female new admissions. Available data show that the growth of the absolute numbers of Puerto Ricans in custody is also related to the fact that more Puerto Ricans are being admitted to correctional institutions than are being discharged. This is one of several characteristics which distinguish Puerto Ricans from other ethnic groups in the correctional system.

Puerto Rican male inmates have received considerably fewer years of education than their black and white counterparts, 80 percent of them not having completed high school.

The offenses for which male Puerto Ricans have been incarcerated correspond more closely to the offenses for which new black inmates have been sentenced than they do to those of the whites. Despite their similarities to the blacks, however, the Puerto Ricans differ from them in three important offense categories. First, larger percentages of Puerto Ricans have been incarcerated for homicide. Second, larger percentages of Puerto Ricans have been incarcerated for drug offenses and in 1976 this percentage increased substantially over 1975, while the black percentage remained stable. Third, although both the black and the Puerto Rican populations of new male admissions are distinguished from the whites by larger percentages sentenced for robbery, the percentage of blacks so sentenced was 10 points higher in 1975 and almost 13 points higher in 1976 than the percentage of Puerto Ricans.

Among females newly admitted to the correctional institutions, both Puerto Ricans and whites were distinguished by relatively few incidences of felonious assault when compared with black women. Black women had larger percentages of homicides, but the major differences were to be found associated with drug offenses. While the percentages of sentences for drug offenses found among white and black new admissions respectively remained stable or declined, the percentage of drug offenses among the Puerto Rican women increased by almost 10 percent in one year.

3

HISPANICS IN A FEDERAL COURT

As we have seen, the numbers and percentages of Hispanics in New York prisons have been increasing in recent years. We have hypothesized that these increases may reflect demographic shifts in the population as a whole as well as demographic changes such as age within the ethnic groups. The increases may also reflect the possibility that Hispanics are being treated differentially by various components of the criminal justice system. An introductory examination of the available data shows that there is reason to suspect that the Hispanic experience of criminal justice may be different from that of other groups, at least in some areas, in some courts, and in relation to some offenses. Moreover, this differential experience may not be traceable to pre-existing differences within the Hispanic communities or between Hispanic and non-Hispanic communities.

A. Ethnicity and the Criminal Sentence

Ethnic bias in decision-making continues to be an imprecisely understood factor in the administration of criminal justice. Racially discriminating decisions are most likely to occur when the opportunities for discretionary decisions are greatest either because they are legally permitted or because the criminal justice subcultures informally sanction them. The extent that progression through the criminal justice system can be understood as a peculiarly ethnic experience can be determined through an examination of those stages in the process where discretion is maximized. Typically, these would include the decision to take into custody, the decision to bring charges, the decision to prosecute, the determination of guilt or innocence, the type of disposition chosen, and the severity of the sentence imposed.

The largest body of research has been generated around the impact of race upon disposition and upon severity of sentence. Studies of sentencing practices have yielded conflicting conclusions concerning the influence of

race upon judicial decision-making. A series of early studies (Sellin, 1935; Frankel, 1940; Martin, 1943; Lemert and Rosberg, 1948; Axebrad, 1952) demonstrated the influence of a wide range of background variables including ethnicity upon judicial practice in both criminal and juvenile courts. In their study of referrals made by the Los Angeles County Probation Department, Eaton and Polk identified variations in disposition according to a variety of non-legal factors including ethnicity (1961), while Green (1961), studying a court in Philadelphia, concluded that the decisive determinants of the severity of the sentence are those recognized in the law and that judicial decisions are uninfluenced by prejudicial perceptions of sex, age, and race. Subsequent studies concluded either that extra-legal factors are significant determinants of judicial decision-making (Nagel, 1967), or that they are not (Baab and Ferguson, 1967; Terry, 1967). More recent studies, however, have tended to reject the hypothesis that ethnicity is a determinant of differential treatment. Bartell and Winfree (1977) concluded that the best predictor of subsequent conviction for any crime was age. Tiffany, Avichai, and Peters (1975) discussing sentencing in the federal courts and Perry (1971) in a study of criminal justice in the military concluded that race has no overall relationship to the severity of the sentence. Farrell and Swigert (1978), acknowledging the influence of extra-legal factors upon the judicial process, nonetheless concluded that, among such factors, "race was found to have no independent effect on either prior record or disposition. Rather, race operates in the legal process through its association with occupational prestige." Tittle, Villemez, and Smith conclude that social class is not a determinant of criminality (1978). Since class is so often cited as a correlate of race or as a contaminating factor in the measurement of the causal effects of ethnicity, their analysis could be extended to imply that race too is not a determinant of crime. Cohen and Kluegal (1978), analyzing juvenile court dispositions, found that "race has no significant association nor interactive effect with legal factors on dispositions. Offense is the major determinant of severity of disposition."

The most extensive and inclusive study of criminal sentencing is that produced by the Utilization of Criminal Justice Statistics Project funded by the Law Enforcement Assistance Administration of the Department of Justice (Sutton, 1978a; 1978b; 1978c). This series of studies explores the relation of offender, offense, process and court-related variables to variation in the length of criminal sentences imposed on offenders convicted in the federal courts across the nation in 1971. The results published so far are complex and provocative. Reference has already been made to the absence of a consideration of Hispanic offenders in this study, even when the district courts included could be expected to have larger than average Hispanic client populations (e.g., the Eastern and Southern Districts of New York, i.e., the federal courts which include Manhattan, the

Bronx and Brooklyn in their jurisdictions; the Southern District of Texas with its large Mexican-American population and its peculiar problems of undocumented Mexicans; and the Central District of California which embraces Los Angeles with its substantial Mexican-American population). Despite this study's neglect of Hispanic offenders, its overall conclusion concerning the effects of ethnicity upon the judicial process was that such effects were conspicuously absent, except in isolated situations where the impact of race upon sentence appeared to work to the advantage of the offender. This was particularly the case in New York and comparisons will be made between the findings of this study and the one shortly to be described.

The diversity of conclusions concerning the relationship between ethnicity and judicial decision-making in the criminal court requires some explanation. The effort to identify the significance of ethnicity is frequently hampered by other kinds of bias. Age, sex, socio-economic class, educational achievement, in-state or out-of-state residence, along with the nature of the circumstances which surround a particular crime may all serve to influence the official decisions which are made about a case. Sutton (1978) included in possible influential variables such criteria as nature of the plea, type of trial (e.g., court, jury, or trial) and the appointment of the defense counsel (assigned by the court, retained by the offender, or waived by the offender).

Green (1961) hinted at methodological problems in the study of sentencing differentials which arise out of the "circularity of reasoning" by which the absence of uniform criteria for sentencing is inferred from the disparities in sentences which, in turn, are attributed to the lack of adequate sentencing criteria. Green also pointed out that differentials on the basis of race may go in more than one direction, favoring the minority member as well as discriminating against him, a finding supported by Sutton (1978). Bullock (1961) suggested that research methodology should extend beyond a consideration of the characteristics of the offender to embrace such additional variables as the background characteristics of the sentencing judge. This consideration is endorsed by the literature already discussed which refers to the influences upon judicial perceptions of a case. Carter and Wilkins (1969) extended the areas of investigation beyond the judge to include an examination of the presentence recommendations of probation officers which, in turn, are an expression of the probation officers' training and the ethos of the probation department. Gibson (1978) also drew attention to the methodological problems inherent in most investigations of variation in criminal sentencing. Studies are not uniform in the type of disposition they concentrate upon, nor do they agree in their definition of severity.Sutton (1978), for instance, devised a complex weighting scale in order to achieve a statistically viable balance between the severity of a

probation sentence and the severity of a prison sentence. It is difficult to compare the findings generated from such an instrument with findings based upon a less sophisticated measurement of severity. Gibson particularly warned against the neglect of associations between race and other "extra-legal" variables, and the tendency to take the court as the unit of analysis rather than the individual judge. The most appropriate question, Gibson argued, is not whether discrimination exists in the sentencing process, but rather, how much discrimination exists.

Conflicting conclusions about the influence of ethnicity upon the criminal justice process arise largely out of different assumptions of the researchers. This monograph is predicated on the assumption that there is a sequential relationship between legal variables in the criminal justice process based on an internal logic between severity of offense, type of disposition, and severity of sentence. It assumes that the fundamental philosophical basis in the administration of the criminal court is that offense is to be measured in terms of seriousness which receives ultimate expression in a correspondingly serious sentence. Severity of sentence is determined by its effectiveness as a deterrent to the convicted offender and to those who might otherwise be inspired to emulate his offense. It is further assumed, however, that extra-legal variables create deviations from this linear progression as they influence the decision-making process at several places in the criminal justice system. When such deviations are combined with social, economic, political, and other factors, they create a distinctive experience of criminal justice for some groups, most often for those which have a singularly identifying characteristic such as ethnicity, gender, national origin, age, or economic status. In the case of ethnic groups particularly, it will be argued that deviations from the generally accepted logic of the criminal justice system contribute to a culturally specific experience of justice.

The linear model of the American criminal justice system is based fundamentally upon a combination of classical criminology and legal positivism. Its basic concern is with the relationship between delict and sanction, the application of the legal code to the proven criminal act. On the other hand, the interactive model of the criminal justice system recognizes that other factors intervene in the decision-making process which divert the course of justice from its austere logic. Historically such intervention is mediated by positive criminology and a jurisprudence which is strongly influenced by the social sciences. Whereas the first model stresses the question of whether or not the accused engaged in criminal activity, the second model asks why an individual convicted by the court should have committed a crime. The first model stresses the seriousness of the offense while the second stresses the pathology of the criminal and is concerned with the social and psychological traits of the offender. The

Hispanic defendant is a very intimate witness to the contemporary manifestation of a historical conflict between these competing ideas of justice.

B. Research Questions

The foregoing discussion raises four immediate research questions: (1) What is the extent of Hispanic involvement in the several stages of the criminal justice system? (2) How does this involvement distinguish (a) sub-cultural groups within the Hispanic populations and (b) Hispanic cultural groups from other cultural groups processed by the system? (3) Do particular criminal acts differentiate the criminal behavior of convicted Hispanic offenders from other convicted populations, and is there evidence of other contributory variables of a cultural, economic, or social nature? (4) Is there evidence to suggest that Hispanic clients of the criminal justice system are treated differentially in terms of (a) type of disposition and (b) severity of sentence? If so, what are the correlates of such differential treatment?

What follows is a reflection upon these questions within the context of a specific exploration of the type of disposition and the severity of sentence imposed upon a sample of federal offenders convicted by a federal district court.

C. Research Methodology

A sample of 505 cases was selected from the probation and parole caseload of the court. Within the federal criminal justice system, the United States probation officer is also the United States parole officer. The population from which the sample was selected consisted of all the cases being supervised by probation officers which had been admitted to the total caseload during the 1972-77 five-year period. Cases which were older than five years were excluded from the sampling population. The population of cases from which the sample was drawn numbered 1,570. All Hispanic cases were selected for analysis; in addition, a small control group of non-Hispanics was randomly selected.

The distribution of the ethnic groups in the overall population were: Puerto Rican, 8.1 percent; other Hispanic, 15.5 percent; all others, 76.3 percent. The definition of Puerto Rican used in the sampling was birthplace; thus, all those in the Puerto Rican sub-sample were born in Puerto Rico. While these sampling procedures avoided ambiguity in the definition of ethnicity, other procedures might have resulted in a larger

proportion of Hispanics. Had Hispanics been identified on the basis of a Spanish surname, for example, the numbers would have increased. Although the second generation of non-Puerto Rican Hispanics is small, the second generation component of the Puerto Rican population is very large (Fitzpatrick and Gurak, 1979). The difficulties of categorizing individuals with Spanish surnames born in the United States about whom no other information is available, however, are close to insurmountable. On the basis of the sampling procedures used, Hispanics accounted for 23.6 percent of the total caseload. This percentage is almost identical to the 23.7 percent Puerto Rican population among the New York City males admitted to state prisons between 1973 and 1979.

The non-Puerto Rican Hispanics were from sixteen different Latin American countries, the largest contingents from Colombia (44.6 percent), the Dominican Republic (12.7 percent), and Cuba (10.2 percent).

The adoption of this particular sampling population has both advantages and disadvantages. The major advantage is that it provides data which distinguish between those who have been sentenced to a prison term (parolees) and those who have been sentenced to probation, within a single legal and regional jurisdiction, that of a specific federal district court. Had the study been conducted in relation to violators of the state criminal code, the samples of probationers and parolees would have had to be selected on a day by day basis from cases being processed by a particular court or they would have had to be taken from different sampling populations, making statistical comparisons difficult. In the case of the latter procedure, which in some ways would have been preferable, the financial resources and the time available were not sufficient for its implementation. Although the sample actually used permits only limited general observations about the prevalence of Hispanics within the total system, it does enable observations to be made concerning the differential nature of criminal justice processing.

There are four major disadvantages of the sample. First, since this is a caseload sample it is not possible to examine the function of the judge as an independent factor in the disposition process. The cases studied had been decided by several judges but the case material from which the data were compiled did not provide information which would have made it possible to introduce the judge into the analysis as an influential factor in determining the type of disposition and duration of sentence.

Second, the stratification of the sample does not make provision for a black sub-sample. While obviously desirable the decision to do so, however, would have limited the data collecting procedures by reducing the size of the Hispanic sub-samples, the major area of concern in this study. Time and other factors necessitated an operational decision which, however limiting, made possible an examination of the total Hispanic population.

The third disadvantage is that all the subjects are violators of the Federal Criminal Code and as such they are not necessarily representative of other convicted criminals in New York State or New York City. Certain forms of criminal behavior frequently associated with cultural and economic subgroups are not found in the sample. These include certain forms of violence, particularly domestic violence; predatory crime, except on or against government property (e.g., mail theft); most juvenile delinquency; and a number of specific felonies.

The fourth and possibly the most serious disadvantage of the sample is that because this is a population of probationers and parolees, there is no way of examining the decision making which occurred in the United States Attorney's office, nor a way of establishing what factors contributed to the dismissal or adjournment of cases in the court or what decisions were made to result in conviction. In short, the sample does not represent a cohort of offenders that had been followed through the legal process. Again, the resources were not available to conduct such a study. It has recently been established that in at least one jurisdiction in New York City only 33 percent of felony arrests result in convictions. Farrell and Walsh (1979) discovered that for every 100 adult felony arrests, 7 were rejected for prosecution by the District Attorney, 10 were sent to the Grand Jury for possible indictment, and 83 were disposed of in the criminal court. Fifty of these 83 cases resulted in no conviction, being dismissed outright or adjourned contemplating dismissal. The influence of ethnicity is unknown in these decisions. It is important, however, to recognize that a comparable sifting and selection process has almost certainly occurred with regard to the sample under consideration here. The cases being examined are the end product of a criminal justice selection process.

Similarly, and again because this is not a cohort study, while it is possible to draw conclusions about factors leading to a prison sentence for those on parole, it is not possible to reflect upon the parole selection procedures nor to compare those on parole with those continuing to serve sentences for comparable offenses. The earlier discussion of the New York State data drew attention to the distinction between Puerto Ricans and other offenders in the release process. Unlike their black and white counterparts, larger numbers of Puerto Ricans were being admitted to prison than were being discharged from prison, pointing to further possible discrepancies between the ethnic balance of the paroled population and that of the imprisoned population. There is clearly a need for a study of parole selection procedures since certain factors which correlate highly with ethnicity in this study are among those which influence federal parole decision-making. The federal guidelines for parole selection are unusually explicit. All offenses are given a severity rating by the United States Parole Commission which may range from low (relatively minor property

offenses) to very high (hard drug offenses through to homicide). The very high category is subdivided into additional severity groupings. In order to determine parole selection, federal offenders are subject to an "offender characteristics analysis" which furnishes a "salient factor score," the name given to a quantitative measure of parole prognosis. On the basis of the salient factor score, the inmate is classified from poor to very good, a classification which when combined with the severity of offense, provides an indication of the customary total time to be served before release on parole. Discretionary departures from these guidelines are permitted, but they must be carefully justified. These procedures have been described because they are the ones which result in the characteristics of the paroled population.

Among offenses which are given a high severity rating by the Federal Parole Commission is the possession with intent to distribute of more than 50 pounds of marijuana while very high severity is attached to the possession with intent to distribute of hard drugs, as well as to homicide and other crimes of violence. Factors which weigh against a good parole prognosis on the salient factor test are large numbers of prior convictions and prior incarcerations, a young age, a history of opiate dependence, and irregular employment or school attendance during the two years prior to commitment (Department of Justice, 1977a, 1977b). Still to be answered is the important question of how far salient factor scores and the characteristics which distinguish ethnic groups from each other provide overlapping or matching silhouettes.

Despite these serious disadvantages, the sample selection procedures are unlikely to have produced bias which would make the situation of Hispanics look worse in the sample than in the total population of the caseload.Because different sampling fractions were used in this stratified sample, appropriate weights are used in order to create a representative sample.

The variables available for analysis were categorized as extra-legal and legal. The extra-legal variables were sex, age, ethnicity, and education. Sufficient data were not available to permit a reliable examination of economic status. While it is generally assumed that individuals of higher economic status are more likely to be found among violators of the federal rather than the state criminal code, the educational level achieved by members of the sample suggests that the majority were of low economic status. Nonetheless, the educational level of the sample is higher than that described in Table 4 for the new male commitments to New York State facilities.

The legal variables examined were (1) type of most serious current offense; (2) type of disposition (probation or a prison sentence); and (3) severity or length of sentence. In the case of persons serving sentences for

multiple offenses, only the most serious offense committed was categorized. The longer the sentence the greater, it was assumed, the seriousness of that particular offense. Six offense categories were constructed on the basis of an examination of the total number of offenses committed by the sample. The categories were bank offenses, mail offenses, drug offenses, immigration offenses, larceny, and a final category of all other offenses.

A major omission from the analysis is that of previous offense record. The identification of prior offense as a legal variable may be open to some ambiguity but several studies have indicated that it is a major factor in the determination of the severity of sentence, although it plays no part in the determination of guilt or innocence except in plea bargaining. Previous offense record was left out of the analysis because there was no information concerning prior record for any of the non-Puerto Rican Hispanics and this information was missing for 60 percent of the other cases. As the investigation was dependent entirely upon official records for information, there was no way of retrieving such data.

Following an examination of the distribution of the extra-legal variables through the sub-samples, a series of cross-tabulations was constructed as a means of developing descriptive generalizations about the relationships between variables. Multiple regression techniques were used to determine how far variations in the criminal justice process might be explained by ethnicity, ethnicity in this instance referring to membership in the Puerto Rican, other Hispanic and non-Hispanic sub-groups. Details of the regression procedures employed are contained in the appendix.

D. Distribution of Variables

Tables 8 and 9 show the percentage distribution of the extra-legal and legal variables through each of the three sub-samples.

Table 8 shows that the sub-samples are differentiated in terms of age and years of education. The Puerto Rican sub-sample has more subjects under the age of 40 than either of the other two. The Puerto Ricans are less well educated than the subjects in the other groups, although the educational level of the Puerto Ricans on the federal caseload is considerably higher than that of Puerto Ricans newly committed to state facilities as described in Table 5 in Chapter 2. A total of 36.7 percent of the Puerto Ricans in the federal sample had graduated from high school, compared with almost 15 percent of those admitted into state facilities. This difference is also found between the control group of non-Hispanics in the present sample and the black and white commitments by the state; 68 percent of the former had completed high school compared with 38

percent of the new white commitments and almost 27 percent of the new black admissions into state institutions.

TABLE 8
Percentage Distribution of Extra-Legal Variables by Ethnicity

	Total	Puerto Rican	Other Hispanic	Non-Hispanic Control
		N=128	N=244	N=133
Sex:[1]				
Male	429	85.9	83.6	86.5
Female	76	14.1	16.4	13.5
Totals	505	100.0	100.0	100.0
Age:[2]				
Less than 21	20	4.7	2.9	5.3
21-29	185	34.4	37.3	37.6
30-39	164	45.3	29.1	26.3
40+	136	15.6	30.7	30.8
Totals	505	100.0	100.0	100.0
Mean years		32.07	34.41	34.67
Education:[3]				
Less than high school grad	232	62.5	45.5	30.8
High school grad	208	32.8	40.6	48.9
College	65	3.9	13.9	19.5
Totals	505	99.2	100.0	99.2

Columns may not add up to 100 percent because they are rounded to one decimal place.

[1] *Not significant.*

[2] $p < .005$

[3] $p < .001$

Table 9 shows that the three sub-groups differ from each other in each of the three legal variables considered: type of offense, type of disposition, and length of sentence. Immigration offenses were omitted from the cross-tabulation as they are specific to the non-Puerto Rican Hispanics. In fact, 13 percent of the offenses committed by this sub-group were violations of the immigration laws. In the analysis they are listed as "other offenses." In the case of the two Hispanic sub-samples, drug offenses accounted for

more than 50 percent of the offenses and in the case of the non-Puerto Rican Hispanics the rate of such offenses was particularly high accounting for more than 75 percent of their total offenses. This is in marked contrast to the offenses of the control group for whom narcotics-related crimes accounted for only 30 percent of the total. It is also in contrast to the distribution of offenses among newly admitted males in New York State facilities described in Table 6. In that population, drug offenses accounted for only 12 percent of the total number of offenses in 1975 and 15 percent in 1976, although the percentage of drug offenders among the Puerto Ricans was higher than in other groups.[10] It is clear from Table 9 that the distribution of drug offenses distinguishes the three sub-samples from each other. The majority of these cases involved the possession and distribution of either heroin or cocaine. In the non-Puerto Rican Hispanic group, convictions were for the illegal importation of these drugs.

The non-Puerto Rican Hispanics were most likely to be parolees than probationers. A major difference exists between the percentage of non-Hispanics on probation and the percentages of both Puerto Rican and non-Puerto Rican Hispanics who had been so sentenced: Hispanics are less likely to be put on probation. The Hispanics also received longer sentences than those in the control group. The relationship between sentence, ethnicity, and narcotics law violation will be examined shortly.

Although Tables 8 and 9 point to differences between the three ethnic sub-samples which suggest that their experiences of criminal justice may be different, the tables do not indicate how far these differences might be a product of factors other than ethnicity such as age or education.

Cross-tabulation suggested a pattern of relations between a number of variables constructed around strong, moderate, weak, and non-existent associations. Ethnicity when controlled for age, for example, had a strong association with offense. A dramatic example is that of those cases which fell into the 40-plus age group. Hispanics in this age group were distinguished from the non-Hispanics by their high percentages of convictions for drug-related offenses. The control group, on the other hand, was distinguished by larger percentages of convictions for mail theft,

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[10]The legal differences between state and federal narcotics violations are principally differences of jurisdiction. Federal narcotics cases arise when the offense occurs on federal property or when it involves allegations of conspiracy, or when it involves interstate trans-shipment. Cases which arise out of investigations conducted by agents of the Federal Drug Administration are also handled by the federal criminal justice system. In actual practice, the lines between federal and state narcotics violations are difficult to establish, particularly in instances which involve considerable cooperation between federal and state law-enforcement agencies.

TABLE 9
Percentage Distribution of Legal Variables by Ethnicity

		Puerto Rican	Other Hispanic	Non-Hispanic Control
	N=	N=128	N=244	N=133
Current Offense:[1]				
Bank Offenses	39	7.8	1.2	19.5
Mail Offenses	57	16.4	3.3	21.1
Drug Offenses	301	59.4	75.8	30.1
Larceny	24	5.5	1.2	10.5
Other	84	10.9	18.4	18.8
Totals	505	100.0	100.0	100.0
Type of Disposition:[2]				
Parole	218	45.3	55.5	18.8
Probation	287	54.7	44.7	81.2
Totals	505	100.0	100.2	100.0
Severity of Sentence:[3]				
up to 3 years	160	21.9	31.1	42.9
3 to 4 years	104	21.1	15.2	30.1
4 to 5 years	101	27.3	20.1	12.8
5 to 6 years	53	11.7	12.3	6.0
6 to 7 years	34	6.3	9.8	3.0
7+ years	53	11.7	12.3	6.0
Totals	505	100.0	100.8	100.8
Mean Sentence		4.94	4.90	4.13

Columns may not add up to 100 percent because they are rounded to one decimal place.

[1] $p < .0001$

[2] $p < .0001$

[3] $p < .05$

larceny, bank robbery, and a series of other offenses. The implication of this consideration of age and ethnicity is that drug offenses appear to be committed by the older members of the Hispanic groups and by the younger members of other ethnic groups. We shall return to this point when the regression analyses are considered.

Analyses of the type of disposition and the severity of sentence suggest that there are clear associations between offense and disposition or type of sentence imposed (probation or a prison sentence), and between

disposition and severity of sentence. Ethnicity when controlled for age is a major factor in predicting whether a defendant will be put on probation or sent to prison. Again the over 40 age group provides a good example. In this age group more than 60 percent of the Hispanics received prison sentences while only 15 percent of the non-Hispanics had been incarcerated. The question here is how far this is a result of a high number of drug offenses which are to be found among Hispanics in this age group.

The cross-tabulations suggested that ethnicity was a weaker predictor of how long a sentence would be imposed once the determination of the type of disposition had been made. The relationships between age and ethnicity, on one hand, and disposition and severity of sentence, on the other hand, are presented in Tables 10 and 11.

TABLE 10
Percentage of Parolees (Former Inmates) by Ethnicity and Age

Age Group	Puerto Rican	Other Hispanic	Non-Hispanic Control
	(N=128)	(N=244)	(N=133)
Under 21	33	0	29
21-29	41	52	22
30-39	45	55	17
40+	60	65	15

The major distinction between the sub-samples with regard to the severity of sentence is found between the Hispanics and the non-Hispanic control group. With the exception of the youngest age group, which contains a very small number of cases, the non-Hispanics have a uniformly larger percentage of shorter sentences in each of the age categories. This may be a function of the type of offense or of the type of disposition. The non-Hispanics have the largest percentage of offenders on probation and probation sentences may generally be shorter than those for incarceration.

The major distinguishing offenses are drug-related crimes. As these predominate in the Hispanic groups, severity of sentence may be related to them. Table 12 suggests, however, that this is not the case. Even among those committing drug-related crimes, the non-Hispanics were placed on probation rather than sentenced to imprisonment. This raises another question: Is there a qualitative difference between the narcotics violations of Hispanics and those of non-Hispanics? The *de facto* distinction between

TABLE 11
Percentage Distribution of Sentences by Ethnicity and Age

		Puerto Rican	Other Hispanic	Non-Hispanic Control
	N=	(N=128)	(N=244)	(N=133)
Under 21				
1-5 years	13	100	29	71
6-8	6	0	71	14
9+	1	0	0	14
Totals	20	100	100	100
21-29				
1-5 years	139	70	69	90
6-8	33	25	21	6
9+	13	5	10	4
Totals	185	100	100	100
30-39				
1-5 years	116	67	69	82
6-8	36	24	24	14
9+	12	9	7	3
Totals	164	100	100	100
40+				
1-5 years	97	70	64	85
6-8	25	25	20	12
9+	14	5	16	2
Totals	136	100	100	100

offenses involving marijuana and offenses involving hard drugs which appear to be made by federal judges is discussed by Sutton (1978b). The question of how far such a distinction is apparent in the present data will shortly be examined.

The cross-tabulations appear to reflect a sequential relationship between the legal variables; that is, offense determines the type of disposition and the nature of the disposition combined with offense determines the severity of the sentence imposed. But the cross-tabulations also draw attention to what may be significant departures from this sequence which may be attributable to Hispanic ethnicity generally and in specific instances to composition of the individual Hispanic sub-samples.

TABLE 12
Percentage Distribution of Dispositions for Drug-Related Offenses, by Ethnicity

Disposition	N=	Puerto Rican (N=76)	Other Hispanic (N=185)	Non-Hispanic Control (N=40)
Probation	110	30	31	75
Parole (Incarceration)	191	70	69	25
Totals	301	100.0	100.0	100.0

$p < .0001$

The cross-tabulations also indicate that ethnicity may combine with other non-legal variables to influence disposition and sentence in some way. The example given here was that of age, but gender and education might also combine with ethnicity to influence judicial decisions.

E. Extra-Legal Variables and the Criminal Justice Process

As a case proceeds through the criminal justice system, it may be hypothesized that the interaction between legal and extra-legal variables becomes increasingly complex. The decisions made in an early stage of the process combine with pre-existent factors which lead to those decisions to influence both latently and manifestly the decisions which are made in the later stages of the process. The relative influence of the variables is, therefore, likely to fluctuate from one decision-making process to the next. Ethnicity may be a major factor at one point of decision-making but may yield its influence to other variables at the next point, or may interact in an unknown way with a newly dominant factor to influence the next decision. Each case which is finally processed to a conclusion, whether that conclusion is dismissal, suspended sentence, or a sentence of probation or incarceration, carries a burden of decisions which have been made or influenced by a multiplicity of officials. Within the parcel of decisions which constitutes a concluded criminal case, there are decisions which have arisen out of the perceptions of justice and treatment held by individuals who possess the decision-making responsibility. To unravel the decisions which have been made about a case is an onerous and perhaps impossible

undertaking. Indeed, one of the principal arguments against the application of scientific techniques to the law is the impossibility of a science of the unique event (Frank, 1949).

The cross-tabulations previously presented suggest, however, that there are relationships between non-legal factors about a case and its final conclusion within the criminal justice system. In order to attempt to identify the function of ethnicity as a predictor of certain kinds of criminal justice experience, and to distinguish more clearly between the experiences of Hispanic and non-Hispanic clients of the criminal justice system, a sequence of multiple regression analyses was computed.

The three major legal variables were sequentially treated as the dependent variables. These were offense, type of disposition, and severity of sentence. In each instance the fundamental question posed was to what extent is the outcome of the legal variable dependent upon either ethnicity alone or ethnicity when combined with additional factors which are both legal and social in character.

F. Type of Offense

The type of offense for which an individual may be convicted is determined by a legal decision as well as by what the individual may actually have done. It is as much the way in which that behavior is defined as it is the actual behavior of the individual that results in a final determination of the crime. The ascription of criminal liability to an act and the legal definitions of conduct and culpability with all their attendant problems of definition (Gross, 1979) combine with questions of due process and the operational frameworks of the various criminal justice professionals to make relative the determination that a particular act performed by a particular individual is criminal. The arresting officer, the Federal Grand Jury, the United States attorney, the trial judge, and the trial jury may all contribute to the definition of the offense through the interpretation of the federal criminal code and through the pragmatic, ideological, and legal decisions and recommendations made at each stage of the process. While it is difficult to determine at which stage the final definition of the offense for which the individual is convicted occurs, the nature of that offense is a product in large part of decisions which are made within the system. It is clear, however, that the decisions of definition have taken place before the judicial decision concerning the type of disposition and before the length of sentence are pronounced. The first regression analysis undertaken, therefore, was one in which offense was examined as the dependent variable and the causal variables were age, education, gender, Puerto Rican ethnicity, and non-Puerto Rican Hispanic ethnicity.

The influence of age, education, and gender was controlled in order to examine the effects of ethnicity upon offense. Because of the predominance of drug offenses throughout the sample and the apparent relationship between drug offense and disposition, the offense categories were reduced to two: drug offense and non-drug offense.

Sutton (1978b) pointed out that while federal sentencing statutes do not distinguish between marijuana and the harder drugs, federal judges seem to make this distinction when they impose sentences. Sutton's analysis of the drug offender population revealed that marijuana offenders were younger, tended to be white, and were more likely to be serving non-incarcerative sentences or shorter prison terms. This present study does not distinguish between marijuana offenses and more serious narcotics violations. The number of marijuana offenders in the sample is very small. A complicating factor in the data which would prevent the testing of Sutton's hypothesis on the present sample is that the control group was selected randomly from all non-Hispanics rendering a sub-sample of mixed non-Hispanic ethnicity.

Solutions to both additive and interactive regression models are presented in Table 13. The interactive model should be regarded with caution as it explains the interaction between ethnicity and a very limited number of other possibly contributory variables involved in the commission of drug offense. It is included here because of its relevance for the hypothesis developed by Sutton. Essentially the interactive model provides more precise estimates of the parameters for each ethnic group. It provides the coefficients that would be obtained if separate equations were computed for each ethnic group.

The additive model shows that after age, education, and gender have been controlled, membership in either of the Hispanic groups is a significant predictor of drug offense, while age, education, and gender do not significantly predict drug-offense probability. Table 13 shows the probability of the relationship between ethnicity and drug offenses for the caseload, not for the society nor for a geographically identifiable population. Essentially, the additive model in Table 13 provides the information that Hispanics on the caseload are there probably because they have committed drug offenses, and this is more likely to be the case for those Hispanics who are not Puerto Rican. The interactive model shows that both age and female gender have a significant negative relationship with drug offense, while Hispanic ethnicity in both its categories of Puerto Rican and non-Puerto Rican significantly interacts with age. This regression solution shows that drug offense probability for Hispanics is greatest in the older age groups while for the non-Hispanics it is greatest in the younger age groups. It also shows that the probability of drug offense for females is significantly lower than for males in the total sample.

TABLE 13
Regression Coefficients of Drug Offense Probability by Extra-Legal Variables

	Additive Model (R^2=.142)*	Interactive Model (R^2=.165)*
Age	-.002	-.005*
Education	.042	.058
Female	-.084	-.152*
Ethnicity:		
Puerto Rican	.312*	-.043
Other Hispanic	.466*	.066
Significant interactions with ethnicity:		
Age:		
Puerto Rican		.016*
Other Hispanic		.014*
Constant	.291	.376

Note: *The technical information relating to the regression analysis is contained in the appendix. For readers unfamiliar with the meaning of regression statistics the following may be helpful. R^2 is a measure of the proportion of variance explained in the dependent variable, e.g., drug offense by the combination of the independent variables, e.g., age, education, gender, and ethnicity. In Table 14, for example, the R^2=.142 indicates that 14.2 percent of the variance is explained by these variables. The regression coefficient is the standardized or partial correlation coefficient between each independent variable and the dependent variable. When this coefficient is 1.0 or -1.0 there is a perfect linear relationship between variables. When the coefficient is 0 the relationship between variables is random.*

*$p < .05$

In reflecting upon the cross-tabulations, it was observed that ethnicity, when controlled for age, appeared to be a major predictor of offense. This is counter to the conclusions reached by Bartell and Winfree (1977) when they presented data which argued that the best predictor of subsequent conviction for any crime is age. The principal observation arising out of the data presented here is that, among federal offenders in this particular jurisdiction, being Hispanic will heighten the probability that the offender has been convicted for a drug offense.

In order to examine the determinants of convicted offense, it is necessary to look beyond the variables considered in all the analyses presented here. It is for this reason that the interactive model should be treated with considerable caution as this is the most refined and precise of

the analytical models used. Additional contributory factors might include socio-economic status along with the factors surrounding the circumstances of the crime which would influence decisions by the arresting officer and the U.S. attorney. With a larger sample, distinctions might be made between marijuana and other narcotics offenses. In such an event it is possible that the age differences which exist among drug offenders who are Hispanic and those who are not might be an indicator that the younger offenders are those who have been convicted of offenses which involve only marijuana contrasted with the older, principally Hispanic, offenders who may prove to be those convicted of offenses involving the use and sale of hard narcotics.

G. Disposition

Conviction is followed by disposition. The nature of the disposition is formally determined by the seriousness of the offense and the available sanctions for the offense prescribed by the Federal Criminal Code. Within those parameters decisions are discretionary, influenced by the recommendations of a probation officer in his pre-sentence investigation, requests for severity or leniency submitted to the court by the prosecuting and defending attorneys, and the judge's appraisal of the evidence according to his own predispositions (Lew and Peoples, 1978). In reality, of course, this logical progression may work in reverse through plea negotiation in which the prosecuting and defending attorneys achieve prior consensus concerning the definition of the offense on the basis of compromise agreements concerning the nature and severity of the disposition.

In most federal drug offenses imprisonment is mandatory. The only exceptions are first offenses which violate any narcotics or marijuana law for which the penalty is specifically stated in the section which defines the offense. These are very few. The federal law requires that any first offender convicted of a drug offense for which the penalty is not stated and which did not involve the sale or transfer of drugs, the term of imprisonment may be no less than two nor more than ten years. If the first offense did involve the unauthorized sale or transfer of narcotics, then the mandatory term of imprisonment is for no less than five and no more than twenty years. For second and subsequent offenders, the mandatory minimum prison term rises to ten years with a maximum of forty years (Sutton, 1978b).

Clearly the penalties imposed by the law will differentiate the Hispanics from other federal offenders simply by virtue of the high incidence of narcotics violations in the two Hispanic sub-samples, but the expectation would be not so much that Hispanics receive a prison sentence but rather

that drug offenders receive a prison sentence. The second regression analysis, therefore, is concerned with establishing the probability of a probation sentence when other factors, including the noncommission of a drug offense, are controlled.

Table 14 shows that the variables included in the additive regression model account for 16.7 percent of the variation in probation probability and each variable is a significant predictor of the variation in type of disposition which is found within the sample. Age, education, female gender, and an offense not involving the use of drugs all contribute to the offender receiving a sentence of probation. Hispanic ethnicity, however, is negatively related to the probability of probation, particularly in the case of the non-Puerto Rican Hispanics. In other words, Hispanics appear more likely to receive a prison sentence. These groups, of course, acccount for the highest percentages of drug offenders.

The interactive model in Table 14 shows more clearly the relationship between drug offense and ethnicity. In this model Hispanic ethnicity is not significantly related to disposition except through the relationships between ethnicity, drug offenses, and age. Among the Hispanics there is a large differential in the probability of going on probation associated with whether or not the offense is drug related. Thus, in the case of Puerto Ricans, the probability of the non-drug offender being placed on probation is higher than for other Hispanics (though other Hispanics also evidence a similar relationship) while the nature of the offense makes little difference to the control group. Hispanic offenders are more likely to go on probation if they have not committed a drug-related offense, this is particularly and significantly true of Puerto Ricans. Conversely, Hispanic drug offenders are significantly more likely than the control group to be sentenced to prison terms.

The interactive model presented in Table 14 also shows a negative relationship between age and the probability of probation for Hispanics, even with type of offense controlled. It seems that older Hispanics, regardless of offense, have a disproportionately high probability of being sentenced to prison.

The interactive model described in Table 14 should be regarded with the same caution as applied to Table 13. The interactive effects of a series of influential factors are unknown. Particularly important is the possible influence of previous conviction since second offenders are unlikely to be placed on probation even if their offense is not drug related. Sutton identified four independent variables explaining the variance in type of sentence imposed for federal narcotics offenses in 1971. These were unchanged plea, age, trial conviction, and criminal record. Neither gender nor ethnicity emerged in the study as an independent or causal variable (1978b).

TABLE 14
Regression Coefficients of Probation Probability by Extra-legal Variables and Non-Drug Offense

	Additive Model (R^2=.167)*	Interactive Model (R^2=.228)*
Age	.003*	.007*
Education	.078*	.103*
Female	.117*	.205*
Non-Drug Offense	.164*	.048
Ethnicity:		
Puerto Rican	-.182*	.350
Other Hispanic	-.284*	.184
Significant interactions with ethnicity:		
Age:		
Puerto Rican		-.015*
Other Hispanic		-.011*
Non-Drug Offense:		
Puerto Rican		.540*
Other Hispanic		.302*
Constant	.429	.323

*$p < .05$

H. Severity of Sentence

The length of sentence proceeds logically from the nature of the offense committed and the type of sentence imposed. While in the case of drug offenders the mandatory prison term required for all but a minority of cases is a major determinant of the type of sentence imposed, the variation of minimum sentence for different specific drug offenses and for different types of offenders will lead to variations in length of prison sentence. This variation is an outcome of the judge's decision after he has considered the information available to him concerning the case and the offender. The actual amount of time served in prison for those offenders not given a maximum sentence as prescribed by law is determined by the United States Parole Commission on the basis of the salient factor analysis already described.

The question here is: What are the chief factors involved in the discretionary determination of sentence, and particularly what, if any, is

the part played by Hispanic ethnicity in the determination of length of sentence?

Regression equations were computed separately for those on probation and those on parole. Table 15 shows that variance in the length of sentence for those on probation was explained by gender, conviction for a non-drug offense, and Hispanic ethnicity. Even when gender and non-drug offense were controlled, Hispanic ethnicity explained variations in sentencing.

Women on probation and non-drug offenders on probation received shorter sentences while Puerto Ricans and non-Puerto Rican Hispanics who were on probation received longer sentences. Only the additive model is reported as there were no significant interactions between ethnicity and the other variables, emphasizing the clear influence of Hispanic ethnicity as a predictor of a long probation sentence.

TABLE 15
Regression Coefficients of Length of Sentence by Extra-Legal Variables and Non-Drug Offense for Cases on Probation

	Additive Model (R^2=.090)*
Age	.004
Education	-.078
Female	-.442*
Non-Drug Offense	-.554*
Ethnicity:	
Puerto Rican	.521*
Other Hispanic	.494*
Constant	.457

*$p < .05$

The large majority of former inmates were drug offenders. A regression analysis was computed solely for drug offenders on parole in order to establish if ethnicity explained their variations in prison sentence. It did not: none of the regression co-efficients computed were statistically significant.

Sutton found that sentences imposed for narcotics offenses were the most predictable of sentences imposed for any crime (1978c). He also observed that narcotics sentences were subject to a relatively large number of predictors and that three legal variables occurred in each of the three federal circuits he examined, namely, method of conviction, prior record of

the offender, and the type of legal representation retained. Only in the Second Circuit, the circuit to which the New York Federal District Courts belong, does race appear as a determinant of sentence for narcotics offenders. Specifically, black offenders receive shorter sentences than those which are imposed upon whites. In examining the aggregate sentences for eight focal offenses, Sutton was able to establish for the Southern District of New York that race affected both type and length of sentence. Blacks were more likely than whites to be imprisoned, but once imprisoned, blacks were more likely than whites to receive a shorter sentence. The major problem with this study was that race was dichotomized as two variables, white/other than white and black/other than black. The large majority of Puerto Ricans in the present study were categorized as white in the official records although some were classified as black and some as other than white. These were presumably absorbed into the dichotomized variables of Sutton's study and in the process the possible influence of Hispanic ethnicity was lost.

TABLE 16
Regression Coefficients of Length of Sentence for Extra-Legal Variables for Drug Offenders on Parole

	Additive Model (R^2=.028)
Age	.010
Education	-.018
Female	.510
Ethnicity:	
Puerto Rican	-.450
Other Spanish-speaking	-.667
Constant	5.502

None of the above was statistically significant.

While none of the coefficients presented in Table 16 is significant, the direction of the influence of Hispanic ethnicity upon sentence for paroled drug offenders is a negative one, suggesting that once imprisoned the Hispanic drug offenders are serving shorter terms than other drug offenders. The lack of statistical significance, however, means that random variation in a few cases would change the results.

I. Discussion

The large majority of studies have suggested that while extra-legal variables such as age, ethnicity, gender, and education may exert some influence upon the discretionary judgments of criminal justice professionals, the legal factors are paramount in the actual procedures of criminal court decisions. By implication, any differences which may be discerned between ethnic groups as members of these groups are processed by the criminal justice system are a product of those conditions which generated specific forms and patterns of criminal behavior. If this is so, then the unique experience of criminal justice possessed by any ethnic group is simply attributable to social, economic, political, and cultural circumstances out of which members of the group may emerge to engage in what is defined as criminal activity. If differences between ethnic groups are revealed in the decision making which occurs in the criminal justice process, such decision making may be interpreted as doing no more than confirming already existing differences between such groups. The logic of the linear model of criminal justice is simple. If the members of a specific ethnic group receive the more severe sentences, it is because they are the more serious criminals. If an ethnic group is disproportionately represented in the criminal justice process, it is because that group has a disproportionate share of society's criminals.

The preceding description suggests that such assumptions are too simple. The examination of conviction, type of disposition, and severity of sentence was based on an initial acceptance of the inherent logic of the criminal justice system as determined by due process. Evidence was presented which demonstrated that cases proceeded through the court with a semblance of logical progression which might have been predicted to some extent on the basis of initial knowledge of the severity of the offense for which the offender was convicted. The data which were presented also pointed to prior characteristics of the Hispanic offender population which are indicative of particular problems in Hispanic, particularly Puerto Rican, communities. The large number of convictions for drug-related offenses among the Hispanic offender population, for example, reflects the findings of Alers (1978) that drug addiction is the most urgent health issue in the Puerto Rican community in New York City. The background characteristics of the Puerto Rican population point to other previously identified problems within the Puerto Rican community in the city. The education level of the Puerto Rican cases studied here, for example, although superior to that of the state offenders, nonetheless reflects the educational deficiencies which are a source of concern to the Puerto Rican community at large.

In the non-Puerto Rican Hispanic group there are also pre-existing

factors which differentiate that group from others and which result in the perpetuation of such differences by the processes of criminal justice. The relatively large number of violations of immigration laws by this group is clearly a differentiating factor traceable to pre-existing social and national differences. The drug-related offenses which are committed by this group and which account for the largest number of convictions belong mainly to the category of illegal importation of dangerous substances, a pattern of illegal behavior attributable in part to the foreign-born characteristic of this group.

On the basis of the data discussed it is possible, in the most general of ways, to construct profiles of Hispanic federal offenders which distinguish them from the control group and to some extent from each other.

The typical Puerto Rican federal offender could be described as a 32-year-old male who has not graduated from high school. He is most likely to be a drug offender although he might have committed other federal offenses, particularly mail theft for which he received a five-year sentence on probation, although there is a strong likelihood that his sentence was to a prison term.

The typical non-Puerto Rican Hispanic offender on this caseload is a 34-year-old Colombian or citizen of the Dominican Republic who may or may not have completed high school and who has received a five-year prison term for a federal narcotics violation. Although the non-Puerto Rican Hispanic offender is most likely to be a male, this group has a somewhat larger percentage of females than either of the other groups.

The profile of the control group is not as definitive as that of the Hispanics. The Hispanics described here account for all the identified Puerto Ricans and non-Puerto Ricans on the caseload, while the control group is an 11 percent random sample. The typical member of the control group is either white or black, male and almost 35 years old; he has at least graduated from high school and may even have attended college. He is serving a four-year sentence on probation and he is much less likely to be a drug offender than the Hispanics on the caseload. Bank robbery, mail theft, and larceny are offenses which set him apart from his fellow convicted offenders.

The differences between the three groups serve to explain in part the differences which occurred in their treatment by the federal criminal justice system. The regression analyses suggest, however, that ethnicity functioned in very important ways to influence the decisions which were made. Ethnicity was related to offense, particularly to drug offenses. As most of these offenses carry a mandatory prison term, the disposition was predetermined once the precise nature of the offense was identified. But even at the point of disposition, the ethnicity of the offender appeared to be related to whether he would be sent to prison or put on probation. It is

worthy of observation that while 30 percent of the control group were drug offenders, only 19 percent of this group had served a prison sentence. While ethnicity did not influence the length of sentence imposed upon those sent to prison, it appeared to have a very significant relationship to the length of sentence for those placed on probation, Hispanics being more likely than others to receive the longer sentences.

It is not the purpose here to evaluate the sentencing practices of the federal criminal courts. The decision-making steps of the court have been examined as a source of evidence for establishing the objective differences which appear to exist between the Hispanic experience of criminal justice and the experience of other convicted offenders. A review of the cases examined suggests that the collective experience of the Hispanic offenders is different from that of persons of other origins who are processed by the criminal justice system. This is clearly of significance for the study of criminal justice systems and it is also significant for the understanding of the place of Hispanic communities in United States society. Ethnicity interacts with the system in such a way that even when offense is controlled, Hispanics get tougher probation sentences and are also more likely to be sent to prison.

The foregoing study is brief and limited. The data have been presented cautiously and with qualifications. It will be argued in the concluding section that this study raises sufficient questions to justify more extended investigations of the Hispanic involvement in and treatment by the nation's criminal justice systems.

4

SUMMARY AND CONCLUSIONS

Studies of the criminal justice system, whether they have sought to establish a critique based upon the ideological, political, and cultural biases of the process, or whether they have probed at dysfunctions and inconsistencies which render the system ineffective, have tended to focus upon the experiences of the system rather than upon the experiences of those who are processed by it. Many investigations have confirmed that the clients of the system are predominantly the poor, the underprivileged, the young, and the members of ethnic minorities; they have asked what this means for the system and the society which supports it. However, they have rarely asked what this means for the ethnic minority groups toward which the system is largely directed. In the context of what has been written here the question becomes, What is the Hispanic experience of the criminal justice system?

Working with limited secondary data, an attempt has been made to illustrate that the Hispanic presence in the criminal justice system is a taken-for-granted, largely unheeded one. In the correctional system of New York State evidence suggests that, however small, the Puerto Rican presence is increasing and more rapidly than for other ethnic groups. The increasing percentage of Puerto Ricans within this system is attributable not only to their disproportionately high presence in new commitments but also to their disproportionately low presence among those being discharged. According to the most reliable demographic estimates, the percentage of Hispanics in the correctional system is double the percentage of Hispanics in the total population of New York City. On a federal probation and parole caseload Hispanics likewise account for more than 20 percent of offenders admitted to supervision in the 1972-77 five-year period.

Analyses of the types of crime committed by the clients of the system reveal an increasingly high involvement in drugs and violence by the convicted Hispanic offenders. On the basis of figures available for males admitted to New York State correctional facilities in 1976, the percentage of Puerto Ricans incarcerated for homicide, although marginally smaller

than in 1975, is still larger than that of the white and black inmate populations. The homicide figures for New York State in 1977 suggest that whereas the percentage of white victims was higher than the percentage of white offenders, Hispanics and blacks were somewhat more likely to be the perpetrators of homicide than they were to be homicide victims. Even so, the percentage of Hispanic homicide victims appears disproportionate to the size of the Hispanic population. Although the data are not sufficient for reliable generalization the homicide figures for New York State in 1977 show that in that year at least Hispanics were involved in actions resulting in death outside their own ethnic group more often than members of other ethnic groups.

While the percentages of black and white males—relative to total admissions—being admitted to New York State correctional facilities for drug offenses changed very little in 1976, the number of Puerto Ricans incarcerated for drug offenses in that year showed an increase of almost 10 percent over 1975. The percentages of black and white women being admitted to state facilities for drug offenses actually declined in 1976, and in the case of black women it did so substantially. Conversely, the percentage of Puerto Rican women being incarcerated for drug offenses in that year increased by almost 10 percent. Drug offenses significantly characterized the Hispanics on the federal caseload.

The available data suggest that in the state system, Puerto Ricans are being sentenced to prison at an increasing rate. In the federal system Hispanic offenders are more likely to serve a prison term than they are to be placed on probation; but when sentenced to probation the length of the sentence is likely to be longer than that imposed on other offenders.

These data point to major social dilemmas prevailing in Hispanic communities and suggest that a concern with the Hispanic cultural experience of the law in American society is long overdue. While such concern should include efforts to document the objective differences which may be found in criminal justice practice, the major focus should be upon the cultural implications of these differences for the several Hispanic sub-communities in the United States.

The extent to which social science data and officially generated statistical information can be utilized as a source for the formulation of recommendations is limited. Limitations are imposed in the first instance by the quality and bias of the data themselves and in the second instance by ideological and political factors which extend beyond any empirical worth the data may possess. The limitations of the data described here have been indicated in various places in the narrative and claims for their definitive quality have been resisted. The major recommendations which do arise are those which in fact relate to the limitations of the data rather than to action in relation to specific issues. Quite simply, public records concerning crime

are generally inadequate; in the case of Hispanics they are woefully so. Even if criminal justice agencies had the most sophisticated and complete recording instruments, however, they would provide only the initial frameworks from within which more realistic questions could be formulated. Whether based on agency reporting or independent research, existing knowledge of the involvement of Hispanic people in the legal system is very limited.

It was indicated in Chapter 1 that theoretical schema for explaining different aspects of Hispanic involvement in criminal justice tend to cluster around the concept of culture. Several general propositions were presented which arise incompletely from the limited body of existing research. Each of these propositions was a variation on the theme that any attempt to analyze the Hispanic experience of criminal justice must address itself to the configurations which occur around culture, social control, and law. Implicit in these configurations are a number of complex theoretical problems which can be addressed only in the context of substantive investigation. But this investigation must be placed firmly within a theoretical framework.

The recommendations submitted here are directed toward filling gaps in our knowledge. Some recommendations arise directly out of the data discussed in these pages. Others arise out of the paucity of information which became apparent as attempts were made to answer questions concerning Hispanics and the criminal justice system. In various ways, the recommendations call for extended research in institutions, in agencies and in the communities.

Recommendation 1

The periodic reports required from criminal justice agencies are based upon differing policies concerning the presentation of ethnic data relating to their clients. Agency practices range from the relatively precise identification of Hispanics by nationality to the inclusion of people of Hispanic origin in an "all other" category which may contain people of Oriental, American Indian, European and other origins. In some instances this practice may be justified by the agencies on the grounds that Hispanics do not constitute a nationally significant minority, or that the percentage of Hispanics on a particular agency's workload is insignificantly low. When Hispanics are separately categorized the criteria used for the identification of Hispanics may be either birthplace, parentage, self-identification, or Hispanic surname. Criminal justice agencies appear to be only slowly becoming aware that Hispanics at present are the second largest minority in the nation and that some projections suggest that they may become the

largest minority before the turn of the century. This alone would be a sufficient argument for more precise and more uniform reporting of the Hispanic presence.

In those states and cities where there are large Hispanic populations, criminal justice agencies should develop a uniform definition of the Hispanic groups to be used in all official reporting. Criminal justice agencies, correctional agencies, probation and parole offices, the courts and the police should be required to publish information describing the ethnicity of the populations they process. Federal agencies responsible for publishing criminal justice data, including the FBI and the U.S. Bureau of Prisons, should separately identify the extent of Hispanic involvement in crime and criminal justice. Particularly the FBI should endeavor to obtain from its reporting agencies data describing Hispanic involvement in arrests for index crimes and Hispanic victimization.

Recommendation 2

New York State statistics on inmate populations in correctional institutions show that Puerto Ricans are constituting increasingly large proportions of new inmate populations. The causes of this increase should be sought. It is particularly important to determine the extent to which it may be a product of demographic changes or changed practices by the police and courts, and the extent to which it is a genuine reflection of increasing Hispanic crime rates. Research should be directed specifically toward the influence upon Puerto Rican incarceration of the reduction in mandatory sentences for drug offenses in New York State.

Recommendation 3

The increasing prevalence of Hispanics in correctional facilities necessitates a review of the support systems available for incarcerated Hispanic offenders and their families. Research should be addressed to (a) the peculiar cultural implications of imprisonment for the Hispanic offender particularly in the early custodial phases following arrest when the risk of suicide may be high; (b) the cultural implications of incarceration for the Hispanic inmate and his family; (c) the need for counseling and other support for the Hispanic inmate and his family, especially spouse and parents.

Recommendation 4

In view of the high incidence of Hispanic involvement in drug-related offenses and homicide, major research efforts should be initiated to explore the socio-cultural and socio-economic bases of such involvement.

With regard to drug offenses there are two principal issues of concern. Changes in the drug laws at both state and federal levels and/or a reduction in the severity of the sentences imposed upon drug offenders could serve to reduce the percentage of Hispanics incarcerated by New York State and the federal courts in New York City. If drug offenses were eliminated entirely the Hispanic percentage of both state and federal offenders would decline; in the case of federal caseload it would decline considerably. Of course, we are by no means recommending the elimination of drug offenses. The complexity of narcotics legislation and the severity of the nation's drug problem are not amenable to easy solution. As sentences for drug offenses become less severe, however, the prevalence of Hispanics in the criminal justice system should be carefully monitored with reference to (a) possible sentence disparities among drug offenders which reflect the ethnicity of the offender, and (b) the continuing number of Hispanics in the criminal justice system who are not drug offenders. If the number of Hispanics who are incarcerated for drug offenses begins to fall, is there likely to be an increase in the number of Hispanics who are incarcerated for non-drug offenses?

The second issue relating to drug offenses is a community one. Whatever the effects of legislative changes and criminal court practices may be upon the incarceration of Hispanic drug offenders, drugs clearly constitute a major problem for Hispanic communities. New research efforts must be directed to (a) the documentation of the involvement of Hispanics in drug-related offenses; (b) the identification of the causes of this involvement; (c) the development of preventive programs which would be based upon the identification and generation of cultural support systems within Hispanic communities.

The place of violence generally and the incidence of homicide particularly are sources of great concern for Hispanic communities in the United States. Most research conducted in this area has focused upon violence in the black community. The predisposition to working with large numbers which characterizes the interests of many research sociologists and the availability of information for black populations, which is unavailable for Hispanic populations, have contributed to this emphasis. Highly sophisticated theoretical propositions concerning violence and its relation to sub-cultures have been formulated in recent years but on the whole they have not been utilized for the study of violence in Hispanic communities in the United States. It is recommended that research efforts

should be directed toward establishing the incidence of homicide and lesser crimes of violence in Hispanic communities with reference to the socio-cultural bases of such actions and to possible preventive measures.

Recommendation 5

The conflicts in legal perception experienced by a migrant from a civil-law nation to a case-law nation are unknown. Although many studies have examined the problems of cultural assimilation experienced by immigrant groups, none has considered in depth the social and cultural implications of the switch from a civil-law ethos to a common-law ethos. Socio-legal research, undertaken jointly by sociologists and research-oriented lawyers, should be developed to examine such implications. Investigations should be designed to explore the perception of the law and the legal system which predominates in Hispanic communities along with an examination of how such a perception is acquired. Such research should particularly explore the nature of the disjunction between Hispanic social-control mechanisms and the established legal system. These investigations might be directed toward a determination of how far special efforts may be required to acquaint Hispanic people with the legal expectations which prevail in the United States and how far special legal support systems might be developed to provide for the distinctive needs of Hispanic people.

Recommendation 6

A principal, although frequently hidden, participant in the criminal justice system is the victim. Research has repeatedly shown that it is the poor, the elderly, the members of ethnic minorities, and the residents of decaying urban neighborhoods who are the victims of crime. Crime, particularly violent crime, tends to be located within relatively fixed socio-economic and socio-cultural groups. It is the action of the poor against the poor, the minority preying upon the minority. To what extent are Hispanics the victims of crime and what is special about the Hispanic victim? There is a continuing problem with the identifying of victims which is almost as great as—and certainly not unrelated to—the problem of identifying the criminal. This may be particularly acute for Hispanic victims. Are Hispanic victims less likely than victims of other ethnic groups to report crimes? If this is so, in what ways might this be related to (a) the Hispanic perception of United States laws and criminal procedures, (b) language difficulties and (c) the reluctance to transmit problems of the Hispanic community to a largely non-Hispanic criminal justice

officialdom? In the case of crimes against undocumented Hispanic aliens the reluctance to communicate with the police or other agencies is understandable. In the case of Hispanics legally residing in the United States, are there voluntary community mechanisms of care and cultural support which function to satisfy the needs of the victim without turning to offical agencies?

It is recommended that the questions posed should be the subject of an overall research study of the Hispanic victim, his prevalence, his attitudes towards the disclosure of a crime, and the formal and informal support systems which may work with such a victim to meet his needs and make disclosure unattractive or undesirable.

Recommendation 7

The willingness of victims to report a crime is frequently related to their perception of the sympathy and effectiveness of the criminal justice system in its dealings with them. In most cases the primary agency with which the victim must deal is that of the police. What is the nature of police-Hispanic relations? How far do Hispanic communities fully comprehend the function of the police in American society and how far is their comprehension influenced by understandings of police departments and police work in other cultures with different kinds of legal systems? What precisely have been the efforts of police departments in large Hispanic communities to develop an understanding of the peculiar difficulties of such communities not only with regard to the specific impact of certain types of crime but also with regard to the culturally ingrained expectations of the police which may be shared by many Hispanic people?

Careful and objective study in Hispanic communities and in the police departments which serve them is required to clarify the nature and problems of the relationship between Hispanics and the police. Such study should perhaps give prime importance to the function of informal social control mechanisms within the community, their relevance to police work and their importance for securing mutual trust between police departments and the people they serve.

Recommendation 8

A comprehensive study of the place of Hispanics in the criminal justice professions is long overdue. This study should address not only the familiar equal opportunity and affirmative action questions concerning percentages, quotas, seniority and representation. It should also examine

the functional significance of the employment of Hispanic people in criminal justice agencies. In what ways does the employment of Hispanics meet immediate needs within the system and extend the support mechanisms of the Hispanic community into the system? Such a study should also examine the possible shifts in the balance of discretion which might occur around the employment of Hispanic people in senior positions with particular reference to the questions raised in the fifth recommendation concerning the perception of law imported from Latin American cultures.

Recommendation 9

This recommendation returns to the situation of the Hispanic accused of an offense. Although the evidence is not conclusive, Hispanic offenders appear to be differentially treated by the courts both in terms of the type of disposition that is imposed upon them and in terms of the severity of the sentence which they receive. More rigorous analysis of the Hispanic experience of the criminal court process is required. The research which has examined the differential treatment of black and white defendants has served to point to a number of situations which are pivotal in the determination of the conclusion of a criminal case. Research should be initiated which in addition to examining the severity of the alleged offenses of Hispanic defendants should also focus upon the significance of the nature and source of legal advice given to the Hispanic defendant; the Hispanic involvement in plea negotiation; and the role of the prosecutor's office and the judiciary in the criminal processing of Hispanic defendants.

Recommendation 10

Similar but also inconclusive evidence suggests that the Hispanic offender is treated differentially in other parts of the criminal justice system. The data presented in this monograph, for example, suggest that, for whatever reason, a disproportionately small number of Puerto Rican inmates in N.Y. State was paroled in each of the two years for which we have the most recent information. If this is the case, then we can hypothesize that at each decision-making stage from arrest to parole, the Hispanic offender is more likely than other offenders to be subject to the most severe of the possible decisions. This hypothesis should be tested, possibly through the development of a cohort study which would trace a sample of arrests through the total criminal justice process. Such a study should be developed to identify the interaction between legal and non-legal variables at each

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critical decision-making stage of the system.

Existing knowledge of the Hispanic experience of criminal justice is sparse. Currently, any attempt to generate a comprehensive picture of the situation is the functional equivalent of building a house on sand. American society broadly acknowledges that certain ethnic minorities constitute a peculiar criminal justice problem not only because they furnish society with its criminals but also because they furnish society with its victims. It is contended here that the Hispanic experience of criminal justice is a significant, although largely unexplored, part of Hispanic cultural experience in the United States. The questions which have been raised in the recommendations provide no more than a minimal basis for understanding the complementary dilemma which Hispanic communities and criminal justice agencies experience together. Until such questions begin to be answered the interaction between Hispanic communities and criminal justice agencies may continue to be informed by assumptions rooted in incomplete and possibly ill-founded conventional wisdom.

APPENDIX

Multiple regression was the major research technique used in Chapter 3 to assess whether ethnicity was a significant predictor of offense, disposition, and sentence after controlling for age, education, and sex.

The independent variables of age (single years) and education (ordinal scale: 1 is less than high school graduate, 2 is high school graduate and 3 is college graduate) were entered in their original form while dummy variables were constructed for the sex and ethnic variables. Sex was defined as 1 if female and ethnicity was comprised of two dummy variables: one for Puerto Ricans and 1 for other Spanish speaking. The omitted categories constitute the reference group whose information is being carried by the constant in the regression equation.

A simultaneous regression solution was employed. Since Puerto Ricans and other Spanish-speaking persons were oversampled, a weighted regression solution was used to approximate the representation of the ethnic group in the larger population without increasing the overall sample size. Puerto Ricans and other Spanish-speaking persons were weighted by .3515 and .3516, respectively, while the control group was weighted by 2.8131.

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